

Raj Kumar v. The Vice-Chancellor and another (Jain J.)

renewal of the appointment of respondent No. 2 in the present writ petition was in consonance with the provisions of the Act and hence suffers from no jurisdictional defect whatsoever.

(11) The petition, therefore, must fail and is dismissed, but we make no order as to costs.

HARBANS SINGH, J.—I agree.

N. K. S.

CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

RAJ KUMAR,—Petitioner.

versus

THE VICE-CHANCELLOR AND ANOTHER,—Respondents.

Civil writ No. 23 of 1969

September 16, 1969.

Punjabi University Calendar, Volume I, Chapter III—Ordinances 4, 5 and 6—Use of unfair means in an examination—Candidate incurring disqualification referred to in Ordinance 4(b)—Such disqualification—Whether relates only to the particular examination in which unfair means used.

Held, that the disqualification referred to in Ordinance 4(b) relates only to that particular examination in which the candidate is found guilty of using unfair means and cannot be extended to other different examinations in which the candidate may have appeared or may be appearing during the period of disqualification. Chapter III of the Punjabi University Calendar, Volume I, relates to use of unfair means and different disqualifications are provided in different situations and for different types of acts in which a candidate may indulge. Reference to the relevant portions of Ordinances 5 and 6 shows that wherever the framers of the Ordinance have thought it proper to disqualify a candidate from all or any of the University examinations, the same has been mentioned definitely in those Ordinances. The framers of the Ordinances never intended to penalise a candidate in one and the same manner whether it was for a minor act or a grave act of use of unfair means and, therefore, punishment has been provided differently according to the gravity of the misconduct. If the framers of the Ordinances had thought it proper to disqualify a candidate from appearing in any examination of the University even under Ordinance 4(b) then a provision similar to the one made in Ordinances 5(c) and 6(a) (i) and (ii)

would have also been inserted therein. In ordinance 4(b) the words simply used are "shall be disqualified for two years" and there is no mention therein that the candidate shall be disqualified from appearing in any or all the University examinations. Rather the reading of the whole of Ordinance 4(b) shows that the disqualification attaches to the particular examination in which the candidate appears and found guilty of using unfair means. (Para 8)

Petition under Article 226/227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order, dated 3rd September, 1968 (Annexure G), disqualifying the petitioner for a period of two years for using unfair means in the Examination.

KULDIP SINGH, ADVOCATE, for the Petitioner.

B. S. DHILLON AND RATTAN SINGH, ADVOCATES, for the Respondents.

JUDGMENT

JAIN, J.—Raj Kumar Sharma has filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of a writ of *certiorari* quashing the order of the Registrar, Punjabi University, Patiala, respondent No. 2, dated 3rd September, 1968, and that of the Committee disqualifying the petitioner under Ordinances 3(c) and 4(b), Chapter III (Use of Unfair Means) Part II (General Ordinances and Rules) of the Punjabi University Calendar, Volume I.

(2) Briefly the facts as alleged in the petition are that the petitioner took T.D.C. Part III Examination of the Punjabi University, held in April, 1968. On May 6, 1968, the petitioner appeared in the Hindi Paper at about 10.20 a.m. when he was about to leave the examination hall, the Supervisor approached the petitioner and found that a printed paper was lying at some distance on the same bench on which the petitioner was sitting. On the asking of the Supervisor, the petitioner picked up the paper and handed over the same to the Supervisor. A report was made to the Superintendent of the Examination Centre to the effect that the petitioner was found copying from a printed matter. Copy of the report is Annexure 'B' to the petition. Thereafter the petitioner was summoned in the office of the Registrar, Punjabi University and a questionnaire was handed over to him for the purposes of answering the questions contained therein. The petitioner's

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statement was also recorded before the members of the Committee. After considering the entire matter, the Committee found the petitioner guilty of using unfair means and disqualified him from the University to take further examination under Ordinances 3(c) and 4(b) for two years, copy of which is Annexure 'F' with the petition. On the basis of the order of the Committee, the letter dated 3rd of September, 1968, was served by the Registrar on the petitioner disqualifying him for two years. Feeling aggrieved from the order of the disqualification, the petitioner filed an appeal before the Vice-Chancellor, Punjabi University, but the same was rejected. By this petition the legality of the decision of the Committee (copy Annexure 'F' to the petition), and the order of disqualification (copy Annexure 'G' to the petition) have been challenged being illegal and against law on various grounds stated in the petition.

(3) Shri Amrik Singh, Registrar, Punjabi University, Patiala, has filed written statement on behalf of respondents 1 and 2 in which the material allegations made in the petition have been controverted. It is averred that the petitioner, while attempting question No. 2 actually copied three and a half lines from the printed matter and he has been rightly held guilty under Ordinances 3(c) and 4(b).

(4) On 21st July, 1969, the petitioner filed an application (Civil Miscellaneous No. 3118 of 1969) under section 151 of the Code of Civil Procedure praying that he be permitted to take additional grounds in the writ petition. Notice of this application was issued to the counsel for the respondents for 23rd of July, 1969, on which date the learned counsel for the parties agreed that the application be decided at the time of hearing of the main writ petition. On the date of final hearing, this application was not opposed by the learned counsel for the respondents and it was conceded by him that the petitioner be allowed to urge the grounds taken in Civil Miscellaneous No. 3118 of 1969. It was also stated by the learned counsel that the respondents were not filing any reply to the application as they admitted the correctness of the facts stated in Civil Miscellaneous No. 3118 of 1969.

(5) In view of the clear averment made in the return of the respondents, Mr. Kuldip Singh, learned counsel, did not rightly challenge the correctness of the disqualification order passed by the Committee (Annexure 'F' to the petition). The record was

made available by the respondents; I have seen the answer book of the petitioner and also the printed matter and find that the petitioner has actually copied three and a half lines from that printed matter. The decision of the Committee holding the petitioner guilty of copying and use of unfair means is perfectly correct and justified and cannot be interfered with in the writ proceedings.

(6) It was next contended by Mr. Kuldip Singh, learned counsel, with vehemence that the petitioner could not be punished and disqualified in B. A. Honours Examination and that the respondents had no jurisdiction to punish the petitioner in respect of B.A. Part III Examination which had already been completed by the petitioner. According to the learned counsel, T.D.C., Part III Examination is different from and independent of the Honours Examination and that at the most the University could disqualify the petitioner from the Honours Examination and could not withhold the result of the T.D.C., Part III Examination which had been completed by the petitioner in April, 1968. On the other hand it was contended by Mr. Rattan Singh, learned counsel for the respondents that the disqualification referred to in Ordinance 4(b), related to a year and not to a particular examination. According to the learned counsel, if a candidate is found guilty of using unfair means in a particular examination which results into his disqualification, then such a disqualification would attach to all the examinations in which the candidate may have appeared in that particular year. Ordinance 4(b) in Chapter III, Part II of Calendar, Volume I, of the Punjabi University, with which we are concerned, is in the following terms:—

“If an answer book shows that the candidate has received help from or given help to another candidate or if he is found copying or to have copied from any paper, book, or note or to have allowed any other candidate to copy from his answer book or to have taken the examination with notes written on any part of his clothing or body or table or desk or instruments (allowed in the Engineering examinations) like set squares, protectors, slide rules, etc., or is guilty of swallowing or destroying any note or paper found on him, or talking to a person outside the examination hall while going to urinal or consulting notes or books while outside the examination hall, he shall be disqualified for two years including that in

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which he is found guilty, if he is a candidate for an examination held once a year, or for four examinations, including that in which he is found guilty if he is a candidate for an examination held twice a year.

Provided that in the case of Final examination in M.B., B.S. so long as it is held thrice a year, the candidate shall be disqualified for six examinations including that in which he was found guilty. The third examination on its abolition shall be counted as an examination held towards the number of examinations for which the candidate is disqualified in cases where the punishment is awarded before such abolition."

(7) The short question that arises for consideration on the respective contentions of the learned counsel for the parties, is whether use of unfair means would entail disqualification to a particular examination or to all the examinations taken or to be taken by a candidate in that particular year or during the period of disqualification.

(8) After giving my thoughtful consideration to the entire matter and to the various Ordinances, I am of the view that the disqualification referred to in Ordinance 4(b) relates only to that particular examination in which the candidate was found guilty of using unfair means and cannot be extended to other different examinations in which the candidate may have appeared or may be appearing during the period of disqualification. Chapter III of the Punjabi University Calendar, Volume I, relates to use of unfair means and different disqualifications are provided in different situations and for different types of acts in which a candidate may indulge. Under Ordinance 5(c) it is provided that if a candidate is found guilty of serious misconduct in the examination hall or misbehaviour towards the Superintendent or any member of the supervisory staff outside the examination hall, he shall be disqualified from appearing in any University examination for a period of two to five years according to the nature of his misconduct. Similar is the case under Ordinance 5(d) which relates to the case of impersonation; there also the disqualification debars the candidate from appearing in any University examination for a period of five years. Under Ordinance 6(a)(i) also the disqualification incurred on the ground of false representation results in debarring a candidate from appearing in any examination of the University

for a period which may extend from three to five years as the Syndicate will determine in each case. Under Ordinance 6(a)(ii) again, the words used are that he shall be disqualified from passing any examination in that year. I have made reference to the relevant portions of Ordinances 5 and 6 in order to show that wherever the framers of the Ordinance have thought it proper to disqualify a candidate from all or any of the University examinations, the same has been mentioned definitely in those Ordinances. The framers of the Ordinances never intended to penalise a candidate in one and the same manner whether it was for a minor act or a grave act of use of unfair means and, therefore, punishment has been provided differently according to the gravity of the misconduct. If the framers of the Ordinances had thought it proper to disqualify a candidate from appearing in any examination of the University even under Ordinance 4(b) with which we are concerned, then a provision similar to the one made in Ordinances 5(c) and 6(a)(i) and (ii) would have also been inserted therein. In this Ordinance the words simply used are "shall be disqualified for two years" and there is no mention therein that the candidate shall be disqualified from appearing in any or all the University examinations. Rather the reading of the whole of Ordinance 4(b) shows that the disqualification attached to the particular examination in which the candidate appeared and found guilty of using unfair means.

(9) The matter can be looked at from another angle also. It is clear from Ordinances 28 and 29 under Chapter 'B.A. (Pass and Honours) and B.Sc. (Pass and Honours) Examinations (3-Year Courses)' in the Punjabi University Calendar, Volume II, and it has not been disputed by the learned counsel for the parties, that the two examinations, that is, T.D.C., Part III, and Honours Course, are different examinations and that the result of the B.A. Pass Course is not, in any way, dependent upon the success in B.A. Honours Course. Such being the position, any punishment inflicted for misconduct in the Honours Course Examination cannot adversely affect the result of the B.A., T.D.C., Part III Course. Further Ordinance 4(b) does not provide withholding of the result of any other examination already taken by the candidate. Thus viewed from any angle, the respondents would not be justified in withholding the result of the petitioner in respect of the T.D.C., Part III, Examination.

(10) No other point was urged.

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(11) For the reasons recorded above, the writ petition is partially allowed to the extent that the respondents are directed to declare the result of the petitioner in respect of T.D.C., Part III (Pass Course) Examination. The petition in respect of the relief that the orders Annexure 'F' and 'G' be quashed, stands dismissed. In the circumstances of the case the parties are left to bear their own costs.

N.K.S.

ELECTION PETITION

Before D. K. Mahajan and R. S. Narula, JJ.

ANOKH SINGH,—Petitioner.

versus

SURINDER SINGH AND OTHERS,—Respondents.

Election Petition No. 2 of 1969

September 19, 1969.

Representation of the People Act (XLIII of 1951)—Section 9-A—Disqualification of a returned candidate under—Conditions to be satisfied—Stated—Expression “in the course of his trade or business” in the section—Whether has reference only to the point of time at which the contract is entered into—“Full performance” of a contract as mentioned in Explanation to section 9-A—Meaning of—Circumstances when a contract ceases to exist—Stated.

Held, that in order to sustain a disqualification of a returned candidate under section 9-A of Representation of the People Act, 1951, the following conditions must be satisfied. (i) The returned candidate should have entered into a contract with the appropriate Government; (ii) The contract must only be either for the supply of goods to the appropriate Government or for the execution of any work undertaken by that Government; (iii) The contract of the kind referred to in item No. (ii) above must have been entered into in the course of the trade or business of the contractor and not merely as a casual transaction; (iv) If and so long as such a contract as is hereinabove referred to subsists, the person concerned shall be disqualified. The effect of the Explanation added to the main provision is that even if all the four said ingredients are satisfied in the case of an elected candidate, he would still not be disqualified if the contract has come to an end by having been fully performed by the contractor, and all that remains is the discharge of the corresponding obligation of the Government under the terms of the contract. The object achieved by the Explanation is that in