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Court : Rajasthan

Decided On : Oct-29-1991

Reported in : 1991(2)WLN369

Judge : S.N. Bhargava, J.

Appeal No. : S.B. Civil Writ Petition No. 6317 of 1990

Appellant : Harish Kumar Nagar

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

S.N. Bhargava, J.

1. As per the facts stated in the memo of writ petition, the petitioner appeared in 3rd Year Electrical Engineering Examination held in the month of November, 1989. He was alleged to have used unfair means in the examination held on 10.5.1990. A notice dated 21.7.90 was served on the petitioner to submit his explanation. The petitioner submitted the reply on 21.7.1990 itself. In, the reply, he had given detailed explanation denying the charges levelled against him. He requested that he should be supplied copies of the Invigilator's report, Examiner's report, copy of admission letter and copy of his answer book. He further made request for

affording personal hearing but no documents, as requested by him, were supplied to him and the respondent No. 2 vide order dated 30.11.1990 cancelled the petitioner's examination of 3rd Year Electrical Engineering, held in the month of November, 1989. He was further debarred from appearing in the examination to be held till May, 1990 and was also further directed not to study in the institution. The present writ petition has been filed on 10.12.1990 seeking to quash the orders Annexures-5 and 6, dated 30.11.1990 and 6.12.1990 respectively. The writ petition was admitted on 12.12.1990 and notices were issued to the respondents. Reply on behalf of the respondents has been filed on 16.1.1991. Since the matter could not be disposed of, the petitioner was permitted to sit provisionally in the examination of Third Year Electrical Engineering to be held in 1991 but the result of the petitioner was not to be declared without the permission of the court. Arguments have been heard. Record has also been perused.

2. In the reply filed on behalf of respondents, it has been submitted that as the petitioner informed at 8 a.m. that he had no admission card, process for preparation of duplicate admission card was started but subsequently at 8.40 a.m. the original admission card of the petitioner was recovered from his table in the examination hall. Therefore, no duplicate card was issued and even the fee of Rs. 5/- taken from the petitioner for issuing duplicate admission card was returned. The admission card recovered from the petitioner contained notes on its back written by pencil between the printed lines. An enquiry was conducted in the matter by Joint Director, Technical Education, on the recommendation of the Examination Results Committee. The Examination Results Committee after going through the report thought that the matter required detailed enquiry. Therefore, the Joint Director, Technical Education, held a detailed enquiry and examined Shri M.I. Meghani, Principal, Government Polytechnic, Kota, Shri D.N. Verma, former Head of the Department (Mechanical), Govt. Polytechnic, Kota, Shri A. Srinivasan, Lecturer (Instrumentation), Polytechnic, Kota. The petitioner was found guilty of using unfair means and certain administrative lapses had also taken place as mentioned in the report Annexure R-I, dated 20.11.1990. The Examination Results Committee after going through the report, accepted the same and passed the impugned order dated 30.11.1990.

3. Learned Counsel for the petitioner has very vehemently submitted that in the present case, the principles of natural justice have been flagrantly violated and has placed reliance on Dilip Singh v. The University of Jodhpur 1978 WLN (UC) 462, Mahendra Mathur v. University of Udaipur and Ors. 1979 WLN (UC) 196, Narendra Gupta v. University of Rajasthan 1986 RLR 190, Miss Anita Mittal v. Sukhadia University 1986 (2) WLN 743, Mohd. Aqbar v. University of Udaipur (Writ Petition No. 2949/88 (DB), decided on 18.11.1988 by this Court) and Ajay Kumar Mittal v. Vice Chancellor Roorkee University and Ors. : (1992)ILLJ634All .

4. In the present case, it is true that notice was given to the petitioner on 21.7.1990, giving him an opportunity to submit his explanation with regard to the allegations of using unfair means. The petitioner in his reply submitted on 21.7.1990 itself denied the allegation of using unfair means. He stated in the reply that he had handed over his admission card to the Invigilator at 8 a.m. before the examination had commenced as there was something written on that paper and also gave Rs. 5/- for preparing duplicate admission card but later on, when Shri D.N. Verma came, he asked to return Rs. 5/- and made this false case. He has further submitted that he had finished 31/2 questions before his copy was taken. If his copy had been taken at 8.40 a.m. it was not possible for him to have finished 31/2 questions. In this respect, he also requested that copy of certain documents, mentioned in earlier part of this order, may be supplied to him and that, he should be given personal hearing. Thereafter, a preliminary enquiry was held by the Joint Director but the Examination Results Committee found that it was not sufficient and therefore, a detailed enquiry was ordered by the Joint Director who recorded statements of four persons and gave the report. It is not disputed that the petitioner was not supplied copies of the documents which he sought nor he was informed that an enquiry was being held by the Joint-Director nor the statements of the witnesses were recorded in his presence nor he was allowed to cross-examine those witnesses whose evidence has been relied by the Joint Director for coming to the conclusion that the petitioner was guilty of using unfair means.

5. Thus, I find that it is a typical case of violation of the principles of natural justice and as has been held in Miss Anita Mittal, Narendra Gupta and Mahendra Mathur cases (supra), the order dated 30.11.1990 has to be quashed as the petitioner

was not afforded any opportunity, whatsoever, by way of cross-examining the witnesses whose statement had been relied by the Enquiry Officer nor the petitioner was furnished with the copies of the various documents which were sought by him and which were also relied by the Enquiry Officer. Thus, the impugned order has been passed in disregard of the principles of natural justice and is liable to be quashed. The petitioner was not even afforded an opportunity to inspect the documents on which the reliance was placed by the Examination Results Committee nor was the petitioner given an opportunity of personal hearing, though it was expressly sought by the petitioner. The enquiry was conducted ex-parte behind the back of the petitioner.

6. In the result, this writ petition is allowed, the order dated 30.11.1990 as also the consequential order dated 6.12.1990 are hereby quashed. Since the petitioner has already appeared in the examination, held in 1991, his result may be declared. No order as to costs.