

cause of action. The prayer for dismissal of the suit and permission to file a fresh suit on the same cause of action was an integral request, which had to be taken into consideration as a whole. For this proposition, he has relied upon a judgment of the Himachal Pradesh High Court, reported as *Hans Raj Akrot v. State of H.P.* (1). I find substance in the submission of the learned counsel for the plaintiff-petitioners. The statement made by the learned counsel for the plaintiffs had to be read as a whole and the same could not be split up. Permission to file a fresh suit on the same cause of action and the permission granted for withdrawal of the suit was integral part of the request made to the Court. In these circumstances, the Court is to permit withdrawal of the suit coupled with the liberty to file a fresh suit. The court in the given case brought before it may refused to grant permission to withdraw the suit, but it is not open to the Court to split up the statement into two parts, i.e. permission to withdraw the suit, but without adverting to the other request of the plaintiffs for permission to file a fresh suit on the same cause of action.

(8) For the aforementioned reasons, revision petition is accepted. Order of the trial court dated 7th November, 1989 is set aside and it be deemed that the suit of the plaintiffs was allowed to be withdrawn with permission to file fresh suit on the same cause of action. No order as to costs.

J.S.T.

Before : M. R. Agnihotri & N. K. Sodhi, JJ.

CHARANJIT SHARMA,—Petitioner.

versus

THE PANJAB UNIVERSITY CHANDIGARH AND
OTHERS,—Respondents.

Civil Writ Petition No. 237 of 1992.

28th February, 1992.

*Punjab University Calendar, Vol. II, 1988—Reg. 19, Page-14—
Unfair Means Case—Student disqualified from appearing in any
University examination for three years ending 1991—Examination*

(1) 2 C.L.J. (C, Cr, & Rev.) 583,

Charanjit Sharma v. The Panjab University, Chandigarh and 373
others (N. K. Sodhi, J.)

due for November/December 1991 postponed due to peculiar situation prevailing in the State—Examination held in 1992 after the period of disqualification—Student is entitled to appear for an examination held after the period of disqualification expires.

(Para 4)

N. K. Sodhi, J.

Held, that merely because the semester examination was originally scheduled to be held in November/December, 1991, is no ground to continue with the disqualification even for the examination to be held after the period of disqualification has expired. It is true that if the examination had been held in November/December, 1991, the petitioner would not have been entitled to appear in the same but since the same was held in January, 1992 when the period of disqualification as decided by the standing committee and as communicated to the petitioner had expired, he, in our view, had right to sit in the examination. This is not a case where the petitioner had been disqualified from appearing in any specified number/semesters of examination to be held by the University.

Civil Writ Petition under Articles 226/227 of the Constitution of India, praying that :—

- (i) records of the case be summoned;
- (ii) issue a writ in the nature of Mandamus directing the respondents to issue roll number to the petitioner to appear in 1st and IInd Semester of B.E. Chemical Engineering examination going to be commenced from 9th of January, 1992;
- (iii) exempt the petitioner from issuing advance notices upon the respondents;
- (iv) exemption of filing certified copies of the annexures;
- (v) costs of the writ petition be also awarded to the petitioner;
- (vi) any other appropriate writ, order or direction may also be issued as the Hon'ble Court may deem fit and proper.

I.P.S. Kohli, Advocate, for the Petitioner.

M. M. Kumar, Advocate, for the Respondents.

JUDGMENT

N. K. Sodhi, J.

(1) The petitioner who is a student of Bachelor of Engineering (Chemical Engineering) appeared for the first and second semester

examinations held in February, 1989 and August/September, 1989, respectively. After the examinations were over, one Shri Ajay Gulati was also appeared in the same examinations complained to the Vice-Chancellor that his papers had been exchanged or interchanged with some other candidate and he suspected foul play. It was felt that the complaint of Shri Ajay Gulati was perhaps justified. The Vice-Chancellor then appointed an enquiry committee to look into the complaint. After a detailed enquiry including scrutiny of the records and hearing all concerned, including the petitioner, the enquiry committee found that the petitioner was guilty of replacing his answer-books for those of Shri Ajay's and Shri Ajay's answer-book for those of his own through fraudulent means. It was also found that the petitioner committed forgery in tampering with the records by altering the serial numbers of the answer-books in the attendance chart.

(2) In view of the recommendations of the enquiry committee and the orders of the Vice-Chancellor thereon, the petitioner was charged under regulation 19 appearing at page 14 of the Punjab University Calendar Volume II (1988) and his case was referred to the standing committee constituted by the University for dealing with cases of unfair means. After following the prescribed procedure and affording full opportunity to the petitioner, the standing committee found the petitioner guilty and disqualified him from appearing in any University examination for a period of three years with the following observations :—

“Taking into consideration the totality of the circumstances of the case including the conclusions of the earlier Enquiry Committee, the Standing Committee holding the charge under Regulation 19 proved against Charanjit Suman disqualifies him from appearing in any University examination for a period of three years including the latter of the two examinations in question which was held on August/September, 1989.”

The Controller of Examinations, Panjab University, then communicated to the petitioner his disqualification as per letter dated 5th August, 1991, the relevant portion of which reads as under :—

“The unfair means case against him has been decided and he has been disqualified from appearing in any University Examination for a period of three years, i.e., 1989, 1990 and 1991 under Regulation 19 appearing at page 14 of the Panjab University Calendar Vol. II, 1988.”

The examinations for the first and second Semester of Bachelor of Engineering (Chemical Engineering) were scheduled to be held from January 9, 1992 onwards. The petitioner deposited the examination fee and filled up the examination form to appear in the said examination but the respondent-University did not permit him to take the examination. The petitioner then approached this Court and by an interim order dated January 8, 1992, we directed the University to allow the petitioner to appear in the examination provisionally subject to the final decision of the writ petition. We are informed that the petitioner has appeared in the examination in pursuance of our interim order.

(3) The only reason why the University did not permit the petitioner to appear in the examination was that the examination was originally scheduled to be held some time in November/December, 1991 during which year he stood disqualified but due to the peculiar situation prevailing in the State and for some other compelling circumstances, the same was delayed and was now scheduled to be held from January 9, 1992. The University in its written statement has admitted that the petitioner had been disqualified from appearing in any examination for the years 1989, 1990 and 1991 and the following stand has been taken in para 5 to justify its action in not permitting the petitioner to appear in the examination in 1992 :—

“That the contents of para 5 of the writ petition are absolutely wrong and vehemently denied. It is submitted that the period of 3 years has not yet lapsed. The Bachelor of Engineering Course is 4 years course which is divided in 8 Semesters. Each semester examination is held twice a year in the month of November/December and April/May ordinarily or on such other dates as may be fixed by the Syndicate. Some delay was caused in conducting of examination because of the peculiar situation prevailing in the State and other compelling circumstances. Instead of holding the semester examination in November/December in respect of preceding semester the examination has been postponed for January. The respondent has been holding its examination from 9th January, 1992 in respect of semester which has lapsed in December, 1991 and for which the examination was to be held in December, 1991. The petitioner wishes only to take benefit from the delay caused in the conduct of examination. It is submitted that the petitioner is entitled to appear

only in next semester examination which is to be held in April/May as the period of 3 years will be completed by then."

(4) After hearing counsel for the parties, we find no merit in the contention raised on behalf of the University. It is not disputed that the petitioner stood disqualified from appearing in any University Examination for a period of three years, including the examinations conducted in the year 1989. This period of three years expired on December 31, 1991 and for any examination to be held in the year 1992, the University cannot refuse the petitioner to appear in the same. Merely because the semester examination was originally scheduled to be held in November/December, 1991, is no ground to continue with the disqualification even for the examination to be held after the period of disqualification has expired. It is true that if the examination had been held in November/December, 1991, the petitioner would not have been entitled to appear in the same but since the same was held in January, 1992 when the period of disqualification as decided by the Standing Committee and as communicated to the petitioner had expired, he, in our view, had a right to sit in the examination. This is not a case where the petitioner had been disqualified from appearing in any specified number-semester of examinations to be held by the University.

(5) For the reasons recorded above, we allow the writ petition with a direction to the respondents to declare the result of the petitioner who has already taken the examination under the interim orders of this Court. There is no order as to costs.

J.S.T.

Before : A. S. Nehra, J.

KRISHAN KUMAR,—Appellant.

versus

SATISH KUMAR AND OTHERS,—Respondents.

Regular Second Appeal No. 1188 of 1988.

13th May, 1992.

Code of Civil Procedure, 1908—S. 11—Res judicata between co-defendants—Only when determination of question as between