

Before Permod Kohli, J.

DEEPINDER SINGH MANN,—Petitioners

versus

**PUNJAB TECHNICAL UNIVERSITY, JALANDHAR
AND OTHERS,—Respondents**

CWP No. 20481 of 2009

3rd May, 2010

Constitution of India, 1950—Art. 226—University Regulations—Chapter XVI, Cl. 10(z)—Petitioner found in possession of Mobile Phone in one paper of examination—Cancellation of examination of all papers—No allegation against petitioner regarding use of unfair means in other papers—Whether examination should be construed as examination of entire semester or only of relevant paper wherein use of unfair means is alleged/attempted—Regulation 11.2 deals with cancellation of answer book in said subject/paper concerned and not of entire examination comprising of all papers—Cancellation is to be confined to only papers in which petitioner allegedly used unfair means—Respondents failing to show any other rule or regulation providing cancellation of all papers where unfair means are exercised only in one paper—University directed to declare result of all other papers in which petitioner appeared including re-appear papers.

Held, that act of the petitioner fall under Regulation 10 as he has been found in possession of Mobile Phone which is capable of being used as a help for writing the examinations. This act constitute an offence under Regulation 10(a). For such an offence, the punishment of disqualification from appearing in any examination is provided under Regulation 11.1. Clause II under the aforesaid regulation i.e. for offences under clause (a) of Regulation 10, maximum disqualification prescribed for a period is not less than two semesters. The petitioner has been awarded this punishment. Regulation 11.2 further provides for cancellation of answer book for contravention of provisions of Regulation 10, for contravention of specified clause or regulation 10 as a whole, the delinquent candidate shall be liable

to cancellation of his answer book in the subject/paper concerned without any implication of moral turpitude. The University has cancelled not only one paper in which the petitioner had carried the Mobile Phone, but all the papers of the final semester examinations—including the re-appear paper of the previous semesters he appeared in June/July 2009 examination—meaning thereby that the examination of not only sixth semester has been cancelled, but even the previous semesters re-appear papers have also been cancelled in which he appeared.

(Para 10)

Further held, that the examination of all the papers has been cancelled though the petitioner was found in possession of Mobile Phone only in one paper of “Expert System” for which the examination was held on 12th June, 2009. There is no allegation against the petitioner regarding use of unfair means in other papers. Under such circumstances, whether the examination should be construed as the examination of the entire semester or only of the relevant paper wherein use of unfair means is alleged/attempted. Regulation 11.2 deals with the cancellation of answer book in the said subject/paper concerned and not of the entire examination comprising of all the papers. No other rule or regulation has been brought to the notice of this Court which, inter alia, provides for cancellation of all the papers where the unfair means are exercised only in one paper.

(Para 11)

Further held, that as far as the question of cancellation of examination is concerned, it cannot be extended beyond the examination/paper wherein the student has used/attempted unfair means. In any case, by no stretch of imagination, cancellation should be extended to the re-appear paper of the previous examination though the candidate has appeared during the same period but in separate examination along with the student of lower semesters.

(Para 13)

Further held, that in so far the disqualification is concerned, the disqualification has to be from appearing in any examination of the University as defined in Regulation 2(iii). This expression has further been clarified by definition under clause (vii) of Regulation 2 wherein “semester of disqualification” has been defined. The petitioner has been imposed penalty of disqualification for two semesters. The period of disqualification is already

over. Even in the impugned order, the petitioner is permitted to appear in the examination to be held in May/June 2010 for which he was eligible in June/July, 2009. Thus, the petitioner can now appear in 6th semester examination to be held in May/June, 2010, having suffered and completed the penalty imposed upon him vide the impugned order.

(Para 14)

Further held, that in so far establishment of unfair means is concerned, findings have been returned by the Committee constituted for this purpose. Apart from that, there is admission on the part of the petitioner. No interference is warranted in these findings in exercise of the power of judicial review. Thus, penalty of disqualification for two semesters is fully justified. As far as the cancellation of papers for which the petitioner appeared in June/July 2009 are concerned, the respondents have cancelled all the Theory and Practical Papers of the entire semesters including re-appear papers. Regulation 11.2 do not permit such an action and the cancellation is to be confined to only the papers in which the petitioner has allegedly used unfair means.

(Paras 23 & 24)

PPS Thethi, Advocate, *for the petitioner*.

Amrit Paul, Advocate, *for respondent Nos. 1 and 2*.

G. S. Nagra, Advocate, *for respondent No. 3*.

PERMOD KOHLI, J.

(1) I have heard learned counsel for the parties at length.

(2) The petitioner, a student of B. Tech. (I.T.) in the SUS College of Engineering and Technology, Tangori (Mohali), has been debarred from attending classes and appearing in any examinations of the University for a period of two semesters. Besides this, examination/result of all the subjects (Theory as well as Practical External/s) he appeared in June/July, 2009, stands cancelled *vide* decision of the Unfair Means Case (hereinafter referred to as the UMC) Committee communicated to the petitioner, — *vide* letter, dated 29th September, 2009 (Annexure P-9). This punishment has been imposed consequent upon the decision of the UMC Committee, dated 12th September, 2009. (Annexure P-8) whereby the petitioner has

been held guilty under clause 10(z) of the University Regulations contained in Chapter XVI of the University Regulations. Both these orders Annexures P-8 and P-9 are under challenge in the present writ petition.

(3) The petitioner appeared in the final semesters examination for the subject "Expert System" of the B. Tech. (I.T.) course on 12th June, 2009 in the SUS College Centre. Centre Superintendent of the Examination found a Mobile Phone in the possession of the petitioner which he had hidden in his turban. The answer sheet of the petitioner was taken from him by the Invigilator along with the Mobile Phone. The petitioner was asked to appear before the UMC Committee on 12th September, 2009 at 9.00 a.m. The petitioner admitted having Mobile phone in his possession which was recovered from him but explained that he had not used the same to solve the question papers. At the time of recovery of the Mobile Phone from the petitioner, he had not attempted even one complete question. Statement of the petitioner was recorded. He was again called on 16th October, 2009 in the SUS College of Engineering and Technology, Tangori, where he is said to have been served a photocopy of the orders passed by the UMC Committee and respondent No. 2 Penalty of cancellation of papers of all the subjects he appeared in June/July, 2009, has been imposed upon him and the petitioner has been debarred from appearing in any of the examinations of the University for a period of two semesters under Regulation 11.1 of the Punjab Technical University Calendar, 2005.

(4) It is contended on behalf of the petitioner that the petitioner never used the Mobile Phone to solve the question paper. It is further contended that when the Mobile Phone was recovered from him, he had not attempted even one question paper. The grievance of the petitioner is two folds :-

- (i) that the petitioner has not used the Mobile Phone for any purpose ;
- (ii) that this examination of all the papers/subjects including re-appear papers of previous examination in which he appeared in June/July 2009, have been cancelled, arbitrarily.

(5) The University in its disclaimer, filed to the writ petition, has defended its action on the strength of the Regulation framed by the University

relating to Unfair Means Cases. The jurisdiction of the Court to exercise power of judicial review in such matters is also contested by relying upon judgments of the Hon'ble Apex Court reported as JT 1992 (4) SC, 204; JT 1994 (4) SC 405 ; JT 2000 (1) SC, 398 ; JT 2003 (6) 320 : AIR 2003 SC 2928. It is contended that the Courts should not interfere with the decision of the Vice-Chancellor/University/Educational Authorities in such matters. It is further held in the above said cases that technicalities of law should not be imported to further the cause of a student who had indulged in malpractices. According to the University, a report dated 12th June, 2009 of the Centre Superintendent and Deputy Superintendent of the examinations, was received about the recovery of Mobile Phone from the petitioner. It is stated that the original used answer sheet of the petitioner was seized from him after detection of the unfair means and it was found that the petitioner had attempted some answers during the time available to him before the detection of the Mobile Phone from him. The matter was taken up by the UMC Committee comprising of a Retired District and Sessions Judge, a retired Brigadier and one other member. Memorandum of charge-sheet was served upon the petitioner who admitted the charges before the Committee. The admission of the petitioner has been duly recorded wherein the petitioner has made the following statement :

“I admit my fault reg. recovery of Mobile Phone from my possession. Mistake will not be repeated.”

(6) On the basis of the aforesaid statement of the petitioner and the report received from the Centre Superintendent of the examination, the UMC Committee recorded the following findings :—

“.....Accordingly we hold the candidate guilty under clause 10 (z) of the regulation *supra* and under clause 11.1 we disqualify the candidate from appearing in any examination of the University for two semesters. He shall be treated as failed in the examinations and all consequences of disqualification shall follow. Mobile set be confiscated to the University. Candidate be informed accordingly.”

(7) On the basis of the aforesaid decision, the University communicated the punishment imposed upon the petitioner through the Principal, SUS College of Engineering and Technology, Tangori (Mohali).

(8) The University has framed the Ordinances relating to Prevention, Punishment and Procedure concerning cases of Misconduct and use of Unfair Means in or in relation to Examinations. Part-II of the aforesaid Ordinance deals with Offences and Punishment. The relevant extract of Regulation 10 under the aforesaid part reads as under :—

“10. The use of unfair means in or in relation to the examination shall include the following facts or omissions on the part of the candidate, viz.

- (a) Being in possession in the examination hall, of papers, books, notes or writing on any part of the candidate's clothes or any writing on his/her body or table or desk or on a foot rule and/or instruments like set squares, protractors, slide rules or any other material with notes or hints written thereon or any such material accessible to him/her which may be or intended to be of possible help to the candidate in the examination.”

(9) Regulation 11 under the same Chapter prescribes the punishments to be imposed upon the petitioner. Relevant extract of regulation is reproduced hereunder :—

“11.1. A candidate found guilty of committing any one or more of the offences under Regulations 10 *supra* shall be disqualified from appearing in any examination of the University for the period specified as under :

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|--|---|
| I For offences under clauses (c), (k) and (r) | Disqualification for a period that may extend to two semesters but be not less than one semester. |
| II For offences under clause (a), (d), (e), (g), (h), (i), (j), (l), (v) and (x) | Disqualification for a period of not less than two semesters. |
| III For offences under clauses (m) and (t) | Disqualification for a period of not less than three semesters. |
| IV For offences under clauses (n) and (o) | Disqualification for a period of not less than four semesters. |

V For offences under clauses (s) and (u)	Disqualification for a period of not less than five semesters.
VI For offences under clause (v)	Disqualification for a period that may extend to five semesters
VII For offences under clause (v)	Disqualification for a period that may extend to five semesters but be not less than two semesters.

Note : All cases in which disqualification has been ordered for a period of five years shall be reported to the Board of Governors by the Registrar.

11.2. A candidate contravening the provisions of clause (b), (f), (q), and (w) or Regulation 10 shall be liable to cancellation of his/her answer book in the subject/paper concerned without any implication of moral turpitude.”

(10) Act of the petitioner fall under Regulation 10 as he has been found in possession of Mobile Phone which is capable of being used as a help for writing the examinations. This act constitute an offence under Regulation 10 (a), noticed herein above. For such an offence, the punishment of disqualification from appearing in any examination is provided under Regulation 11.1. Clause II under the aforesaid regulation i.e. for offences under clause (a) of Regulation 10, maximum disqualification prescribed for a period is not less than two semesters. The petitioner has been awarded this punishment. Regulation 11.2 further provides for cancellation of answer book for contravention of provisions of Regulation 10, for contravention of specified clause or regulation 10 as a whole, the delinquent candidate shall be liable to cancellation of his answer book in the subject/paper concerned without any implication of moral turpitude. The University has cancelled not only one paper in which the petitioner had carried the Mobile Phone, but all the papers of the final semester examinations including the re-appear paper of the previous semester he appeared in June/July, 2009 examination-meaning thereby that the examination of not only sixth semester has been cancelled, but even the previous semesters re-appear papers have

also been cancelled in which he appeared. Regulation 2 has defined various terms used in the regulations. The following terms relevant for the purpose of this petition are re-reproduced hereinunder :—

- (i)
- (ii)
- (iii) “Disqualification” shall mean disqualification from appearing in any examination of the University and will be treated as failure in the examination and all consequences of failure will follow ;
- (v) “Examination” shall mean an examination conducted by or at the instance of the Punjab Technical University and shall include an examination so conducted though subsequently cancelled ;
- (vii) Semester of disqualification shall be taken to extend from commencement of the examination in which the candidate is detected to have terminated one day before commencement of the next semester examination, as the case may be.”

(11) The expression “Examination” has been defined to mean the examination conducted by or at the instance of the Punjab Technical University and shall include an examination so conducted though cancelled subsequently. Definition of “Examination” mean the entire examination of a particular semester comprising of all the papers and also the examination of a single/particular paper/subject. In the present case, the examination of all the papers has been cancelled though the petitioner was found in possession of Mobile Phone only in one paper of “Expert System” for which the examination was held on 12th June, 2009. There is no allegation against the petitioner regarding use of unfair means in other papers. Under such circumstances, whether the examination should be construed as the examination of the entire semester or only of the relevant paper wherein use of unfair means is alleged/attempted. Regulation 11.2 deals with the cancellation of answer book in the said subject/paper concerned and not of the entire examination comprising of all the papers. No other rule or regulation has been brought to the notice of this Court which, *inter-alia*, provides for cancellation of all the papers where the unfair means are exercised only in one paper.

(12) Mr. Amrit Paul, learned counsel for the respondents has tried to convince this Court that the definition of examination under Regulation 2 (iv) is comprehensive to mean all the papers. The expression “examination” has to be construed and understood in the context of the regulations framed by the University. The definition has been provided for the purposes of Prevention and Punishment for unfair means and should be interpreted in that context. Since the unfair means has been used in one paper/subject, the cancellation should be confined to only that subject/paper and should not be extended to other papers where the student has not been accused of any unfair means. This seems to be the object of Regulation 11.2, though clause (a), of Regulation 10 is not specifically mentioned in the said regulation.

(13) As far as the question of cancellation of examination is concerned, it cannot be extended beyond the examination/paper wherein the student has used/attempted unfair means. In any case, by no stretch of imagination, cancellation should be extended to the re-appear paper of the previous examination though the candidate has appeared during the same period but in separate examination along with the student of lower semesters.

(14) In so far the disqualification is concerned, the disqualification has to be from appearing in any examination of the University as defined in Regulation 2 (iii). This expression has further been clarified by definition under clause (vii) of Regulation 2 wherein “semester of disqualification” has been defined. The petitioner has been imposed penalty of disqualification for two semesters. The period of disqualification is already over. Even in the impugned order Annexure P-9, the petitioner is permitted to appear in the examination to be held in May/June, 2010 for which he was eligible in June/July, 2009. Thus, the petitioner can now appear in 6th semester examination to be held in May/June, 2010, having suffered and completed the penalty imposed upon him *vide* the impugned order.

(15) Now the question which remains to be considered is regarding the cancellation of all the papers of 6th semester and re-appear of previous semesters. Regulation 11.2 provides for cancellation of only such papers in which unfair means has been used/attempted and no other paper. No other rule or regulation has been pressed into service to justify the cancellation of all papers of 6th semester and particularly re-appear papers of previous semesters. This action of the respondent-University is not justified.

(16) The petitioner has relied upon Division Bench judgments of this Court reported as **Khan Dhiman versus Punjab Technical University and others** (CWP No. 17419 of 2006) decided on 16th April, 2007. In this case, the candidate was apprehended during the examination with a mobile phone. He was disqualified for appearing in the examination for two semesters and result of all the subjects in which he appeared also came to be cancelled. Considering the validity of the penalty imposed, this Court made the following observations :—

“Since it is not proved that the mobile phones were used as unfair means during the examinations, therefore, mere possession of the mobile phones in switched off mode would not attract any Regulations referred to above.”

(17) The petitioner has relied upon Division Bench judgment of this Court reported as **Ganeemat Singh versus Punjab Technical University and others** (CWP No. 4728 of 2006) decided on 14th July, 2006. In this case also the candidate was caught with a mobile phone and a penalty of disqualification for two years was imposed. A Division Bench of this Court set aside the order holding that mere possession of the mobile phone attracts no penalty.

(18) To the contrary, Mr. Amrit Paul, learned counsel appearing for the respondent-University has also relied upon a Division Bench judgment of this Court reported as **Harsimrat Singh and others versus State of Punjab, (1)**. The facts of this case are similar to the present one. The candidate had concealed mobile phone in his turban during the course of examination. The Unfair Means Case Committee imposed the punishment of penalty of disqualification from appearing in any examination of the University for a period of two semesters. On consideration of the relevant rules, this Court made the following observations :—

“16.....It has already been held that the petitioners were found in possession of mobile phones while appearing in their examination and the aforesaid phones had been kept concealed in their

turbans. It is apparent that the petitioners had a *mala fide* intention to carry the aforesaid instruments and therefore, it could always be taken that they were in possession of such material which was accessible to them and which was intended to be of possible help to them in the examination. The case of the petitioner is squarely covered under the aforesaid Regulation 10(a). In view of the aforesaid discussion, we find no merit in the present petition and the same is dismissed.”

(19) From the above judgments, it appears that there are two sets of judgments on the same issue by the Division Benches of this Court. On account of the conflicting opinion, normally, the issue should have been referred to a Larger Bench. However, in view of a recent judgment of the Hon’ble Supreme Court on the same issue, I proceed to decide this petition.

(20) Hon’ble the Supreme Court has considered the question of possession of incriminating material by the candidate in an examination in the case of **Director (Studies) and others versus Vaibhav Singh Chauhan (2)**. In this case, the candidate was found in possession of the slip during the course of examination. The slip was taken into possession and fresh answer sheet was issued to him. Proceedings for Unfair Means Case was initiated against him and the candidate was disqualified for academic session and examination of all the papers came to be cancelled. It was admitted case of the parties that the slip was never used by the candidate. On consideration of the rule and the controversy, Hon’ble the Supreme Court made the following observations :—

“17. Coming to the interim order of the learned Single Judge dated 31st March, 2006, it may be noted that in the very second sentence of the order the learned Single Judge stated that the record did not bear out whether the chit had actually been used in the examination. As already noted above, this was a wholly irrelevant consideration. Once it is found that the chit/piece of paper contains material pertaining to the examination in question it amounts to malpractice, whether the same was used by the examinee or not.

18. The learned Single Judge in the interim order has then emphasized on the fact that the respondent had apologized and had confessed to the possession of the chit. In our opinion this again is a misplaced sympathy. We are of the firm opinion that in academic matters there should be strict discipline and malpractices should be severely punished. If our country is to progress we must maintain high educational standards, and this is only possible if malpractices in examinations in educational insititutions are curbed with an iron hand.”

(21) On the question of cancellation of all the papers, the Hon`ble Supreme Court in the judgment aforesaid made the following observations :—

“25. The learned Single Judge in his judgment dated 30th October, 2006 has directed that the writ petition’s result in the subject “front Office” in which he appeared in April, 2006 and other papers in which he appeared in 2005 he declared forthwith. In our opinion, this was an illegal direction, because as stated in Rule 9.1, once a candidate has been found using unfair means even in one subject/paper, he will be deemed to have failed in all the subject/papers and he has to rewrite the entire examination, and not merely for the single paper in which he is found to have used unfair means.”

(22) The observation of the Hon`ble Supreme Court in the aforesaid judgment are applicable on all force to the present case except in paragraph 25 wherein the Hon`ble Supreme Court approved the cancellation of all the papers, though the candidate was found using Unfair Means only in one paper. These observations were made in view of the specific provisions of Rule 9.1 of the Examination Rules of the concerned University. The rule/ regulation position in this case in totally different. Regulation 11.2 framed by the Guru Nanak Dev University, however, specifically provide for cancellation of only the paper wherein the Unfair Means were used and not entire examination.

(23) In so far establishment of unfair means is concerned, findings have been returned by the Committee constituted for this purpose. Apart from that, there is admission on the part of the petitioner. No interference is warranted in these findings in exercise of the power of judicial review. Thus, penalty of disqualification for two semesters is fully justified.

(24) As far the cancellation of papers for which the petitioner appeared in June/July, 2009 are concerned, the respondents have cancelled all the Theory and Practical Papers of the entire semesters including re-appear papers. Regulation 11.2 do not permit such an action and the cancellation is to be confined to only the papers in which the petitioner has allegedly used unfair means.

(25) For the reasons recorded above, the petition is partially allowed. The cancellation of examination for papers of 6th semester and re-appear papers for which the petitioner appeared in June/July, 2009, except the papers of "Expert System" is hereby quashed and set aside. Cancellation of examination shall be confined to only one paper of "Expert System." As a consequence, the respondent-University is directed to declare the result of all other papers of 6th semester in which the petitioner appeared in June/July, 2009 including the re-appear papers, within a period of one week and depending upon the outcome of result of these papers, the petitioner shall be entitled to appear/re-appear in those papers.

(26) In so far as the right of the petitioner to appear in the examination is concerned, he has already suffered the penalty and the period of disqualification of two semesters is already over. Even *vide* the impugned order, the petitioner has been permitted to appear in the examination to be held in May/June, 2010. The petitioner shall be entitled to appear in the aforesaid examination accordingly.