

Court No. - 7

Case :- WRIT - C No. - 1007064 of 2015

Petitioner :- Priyanka Dubey

Respondent :- State Of U.P. Thru Prin.Secy.Higher Edu.Civil Sectt.And
Ors.

Counsel for Petitioner :- Avinash Chandra,Sukumar Srivastava

Counsel for Respondent :- C.S.C.,Savitra Vardhan Singh

Hon'ble Alok Mathur,J.

1. Heard Shri Sidharth Nath Singh, Advocate holding brief of Shri Avinash Chandra, learned counsel on behalf of the petitioner and learned Standing Counsel on behalf of the respondent no.1 and Shri Savitra Vardhan Singh, appearing on behalf of the Lucknow University- respondent no. 2 to 5.

2. The present case clearly demonstrates callous and negligence attitude and actions of the Lucknow University with regard to the petitioner, who was a student of B.Sc. 3rd year and had appeared in the examinations in 2009. The result of the said examinations were declared, but the result of the petitioner was withheld. Subsequently, the petitioner came to know that the result has been withheld on account of certain allegations attributable to the petitioner, according to which the answersheets were manipulated in six subjects.

3. Despite repeated attempts made by the petitioner, no order was passed by the respondent-University either scoring her answersheets in the aforesaid subjects nor passing any order which may indicate her misconduct due to which the said examination was cancelled. No order was passed by the Lucknow University till a show cause notice was given to the petitioner for the first time on 20.02.2010. In the said show cause notice dated 20.2.2010 passed by the office of the Controller of Examination the petitioner was asked to respond to the

allegations with regard to the subjects which were coded as S-648, S-649, S-650, S-671, S-672 and S-673 the answersheets were transplanted and the petitioner was directed to respond to the said allegations within a period of 15 days. The petitioner duly responded to the said show cause notice by a reply dated 12.03.2010 and denied the said allegations and further stated that she was never made aware of the aforesaid allegations. After submitting a reply on 12.03.2010, the respondent University did not communicate any decision in pursuance of the show cause notice given to the petitioner.

4. It seems that the Lucknow University on receiving the response of the petitioner had constituted an Examination Committee to take a decision with regard to the petitioner. It has been informed that the said committee came to a decision on 21.05.2012 to the effect that the petitioner be permitted to appear as an exempted candidate in the year 2012-13 and also took a decision that her examinations in the year 2009 stood cancelled. There is no dispute that the decision of the examination committee dated 21.05.2012 was never communicate to the petitioner and it is on account of the said fact that the petitioner could not even appear in 2012-13 examination. It seems that respondent University realised their mistake that the order of the Examination Committee dated 21.05.2012 was never communicated to the petitioner, and in the meanwhile the petitioner had approached this Court by filing a writ petition being Writ Petition No.6992 (MS) of 2014. It is during hearing of the said writ petition, Counsel for the Lucknow University informed the Court that a decision in this regard has been taken by the University on 15.11.2014. When the counsel for the petitioner was informed about the fresh decision having been taken by the Lucknow University, he prayed for dismissal of the the writ petition as withdrawn with a liberty to file afresh petition assailing the decision of the Lucknow University. It is the subsequent

decision dated 15.11.2014 passed by the Examination Committee that the present writ petition has been filed by the petitioner.

5. A perusal of the order dated 15.11.2014 would clearly indicates that there is no finding the petitioner had in fact transplanted the answersheets and was guilty of misconduct. For sake of convenience, paragraph No.1(v) of the said order is quoted herein below:-

“परीक्षा समिति की बैठक दिनांक 21.05.2012 को बी0एस0सी0 तृतीय वर्ष की छात्रा प्रियंका दुबे की वर्ष 2008-09 के प्रकरण के सम्बन्ध में समिति द्वारा गहन विचार विमर्श किया गया तथा सर्वसम्मति से यह निर्णय प्रदान किया गया कि समिति द्वारा गठित उपसमिति की रिपोर्ट में यह स्पष्ट किया गया है कि ऐसा प्रतीत होता है कि उत्तर पुस्तिकाओं में प्रत्योरपण किया गया है परन्तु प्रत्यारोपण किस स्तर पर हुआ है इसकी पुष्टि नहीं हो सकी है। अतः समिति द्वारा सर्वसम्मति से यह निर्णय प्रदान किया गया कि छात्रा प्रियंका दुबे की वर्ष 2008-09 की परीक्षा निरस्त की जाती है तथा यदि छात्रा पुनः बी0एस0सी0 तृतीय वर्ष की परीक्षा में सम्मिलित होना चाहती है तो उसे वर्ष 2012-13 की परीक्षा में एग्जस्टेड अभ्यर्थी के रूप में सम्मिलित करा दिया जाए।”

6. The aforesaid order clearly indicates that the Committee was of the view that there was **possibility** of the answersheets having been transplanted but no fact leading to such presumption was even narrated in the said order. It is merely on account of the aforesaid presumption, surmises and conjectures that the Committee proceeded to cancel the examinations and offered the petitioner to appear in the subsequent examinations of 2014-15. In the said order, the Lucknow University itself has admitted that the order dated 21.05.2012 was never communicated to the petitioner and a decision has already been taken previously that the examination for 2009 of the B.Sc. 3rd Year Examination stood cancelled. In the last paragraph of the said order, it has been stated that considering the serious nature of the allegation against the petitioner and also considering the serious lapse on the part of the University Authorities, a detailed enquiry ought to be instituted to fix the responsibility of the person, who is responsible for

the same and the said enquiry to be produced in the next meeting of the Committee. At this stage, it is sufficient to indicate that despite the counter affidavit having been filed by the Lucknow University on 27.11.2016, there is no whisper with regard to any enquiry proceedings having been conducted or concluded as per the order dated 15.11.2014. While assailing the order dated 15.11.2014, counsel for the petitioner has vehemently submitted that no opportunity has been given to the petitioner and the entire proceedings have been conducted *ex parte* in gross violation of principle of nature justice.

7. A cryptic show cause notice was given to the petitioner on 20.02.2010, merely narrating the allegation against the petitioner without even supplying a photocopy of the answersheets, on the basis of which such allegations were made. In the said show cause notice, a mention has been made to an enquiry which was got conducted previously where the allegations were found true against the petitioner but surprisingly, the enquiry report was also never submitted to the petitioner nor does the same find mentions in the show cause notice.

8. A perusal of the order dated 21.05.2012 by which the paper of the petitioner was cancelled and she was held responsible for transplantation of the answersheets, even the enquiry committee could not come to a definite conclusion with regard to the culpability of the petitioner for transplanting the answersheets and the Controller of the Examinations has only held that there was a possibility of transplantation of the answersheets. Mere possibility can never be a substitute for coming to a definitive conclusion with regard to the culpability of the petitioner being involved in transplantation of the answersheet which could have been a misconduct, had the same been proved by the authority concerned.

9. From the aforesaid, it is clear that merely on account of the possibility of involvement of the petitioner in transplantation of the ordersheets, she has been held to be guilty on the basis of which her

examinations for the 3rd year B.Sc. has been cancelled and after a lapse of more than 5 years was offered to appear again in the examinations of 2014-15.

10. Considering the first submission of counsel for the petitioner that the proceedings were in gross violation of principle of nature justice, it is abundantly clear that after show cause notice, the petitioner had submitted her response. But, no order was communicated to the petitioner on the conclusion of the inquiry proceedings. Even the show cause notice is bereft of the relevant material relied upon in the show cause notice itself, neither the copies of the answersheets were provided to the petitioner nor was the copy of the inquiry report, which was an existence at the time of passing of the show cause notice was supplied to the petitioner.

11. In the aforesaid circumstances, this Court is of the considered view that the proceedings conducted by the respondents were clearly in gross violation of principle of natural justice and such proceedings cannot be sustained. The second aspect of the matter is with regard to the non-communication of the order dated 21.05.2012. Merely passing of the order is not sufficient to hold a person guilty during an inquiry but it is equally essential and mandatory that such an order should in fact be communicated to the delinquent at the conclusion of the enquiry proceedings. Non-communication of the order renders the same non-est and non-existing and no action can be taken in furtherance of the order which has not been communicated to the party concerned.

12. The impugned order dated 15.11.2014 has been passed only on the basis of previous order dated 21.05.2012. Once we have held the order dated 21.05.2012 being illegal and non-est, then the subsequent order dated 15.11.2014 based solely on the previous order dated 21.05.2012 would suffer the same fate and is also illegal and arbitrary

to the extent it cancels the papers of the petitioner pertaining to the examinations held in 2009.

13. The pronouncements of the Supreme Court in the case of **Bachhittar Singh v. State of Punjab and another** reported in **AIR 1963 SC 395** and the **State of Punjab and another v. Resham Singh and others** reported in **AIR 1966 SC 1313** have firmly established the rule that an administrative order takes effect from the date it is communicated to the person concerned or is otherwise published in the appropriate manner.

14. The Hon'ble Supreme Court in a catena of cases have clearly laid down the consequences of non-communication of orders to the affected party and in this regard one may gainfully refer to the decision in **Sethi Auto Service Station vs. DDA** reported in **(2009) 1 SCC 180** wherein the Hon'ble Supreme Court after referring to the case of **Bachhittar Singh vs. State of Punjab** reported in **AIR 1963 SC 395** made the following observation:-

"14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

15. In **Bachhittar Singh v. State of Punjab AIR 1963 SC 395**, a Constitution Bench of this Court had the occasion to consider the effect of an order passed by a Minister on a file, which order was not communicated to the person concerned. Referring to Article 166(1) of the Constitution, the Court held that order of the Minister could not

amount to an order by the State Government unless it was expressed in the name of the Rajpramukh, as required by the said article and was then communicated to the party concerned. The Court observed that business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. Before an action is taken by the authority concerned in the name of the Rajpramukh, which formality is a constitutional necessity, nothing done would amount to an order creating rights or casting liabilities to third parties. It is possible, observed the Court, that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion which may be opposed to the earlier opinion. In such cases, which of the two opinions can be regarded as the "order" of the State Government? It was held that opinion becomes a decision of the Government only when it is communicated to the person concerned."

16. To the like effect are the observations of this Court in **Laxminarayan R. Bhattad v. State of Maharashtra [Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413]**, wherein it was said that a right created under an order of a statutory authority must be communicated to the person concerned so as to confer an enforceable right."

17. From the above, it is clear that the manner of conducting the inquiry by the Lucknow University in the present case was clearly illegal and arbitrary as no opportunity given to the petitioner and the first order dated 21.05.2012 it seems was passed three years after the alleged incident with regard to transplantation of the order sheets. The matter directly pertains to the educational future of the student, who was deprived from sitting in the examinations of the B.Sc. 3rd year and even pursuing further education, to which the candidate may have been entitled. The action of the Lucknow University in not only in

violation of principle of nature justice but has deleterious effect on the future of the candidate and such an action is deplorable.

18. It is in the aforesaid circumstance, this Court is of the considered view that merely permitting the petitioner to sit in the examinations of 2014-15 does not in any way justify the negligent and careless conduct of the University.

19. In the impugned order dated 15.11.2024 an inquiry was also ordered by the Vice-Chancellor to inquire into the circumstances as to why the order dated 21.05.2012 was not communicated to the petitioner. The counter affidavit of the University is silent on this aspect of the matter. It seems that the University is not serious about such directions and even the Vice-Chancellor has not cared to see that his orders are complied.

20. In light of the above, the writ petition is **allowed** and the order dated 15.11.2014 stands **quashed** except Clause 3 which provides for conduct of inquiry, in view of the fact that I have already held that the previous order dated 21.05.2012 is non-est and non-existing.

21. Before parting, it is pertinent to add, as recorded above, no opportunity was given to the petitioner nor there is a definite finding with regard to the culpability of the petitioner, coupled with the fact that the order dated 21.05.2012 was not communicated to the petitioner and hence she was not permitted to sit in the examinations for the year 2012-13, the Lucknow University is responsible for ruining the career of a student without there being any definite and concrete finding of misconduct in the alleged transplanted answersheets.

22. The courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. Discussing the purpose, Hon'ble Supreme Court in the case of **Revajetu Builders and Developers versus Narayanswamy and**

sons and others reported in **(2009) 10 Supreme Court Cases 84** has held :

“62. The purpose of imposing costs is to:

(a) discourage mala fide amendments designed to delay the legal proceedings;

(b) compensate the other party for the delay and the inconvenience caused;

(c) compensate the other party for avoidable expenses on the litigation which had to be incurred by the opposite party for opposing the amendment; and

(d) to send a clear message that the parties have to be careful while drafting the original pleadings.”

23. In view of the above, cost must be compensatory in nature so as to provide remedy for the inconvenience and anguish suffered by the aggrieved due to negligence and failure to discharge duty enshrined upon the authority.

24. In these circumstances, the petitioner at best can only be compensated and accordingly, the petition is **allowed** at the cost of rupees two lakhs, which shall be paid by the respondent University to the petitioner within a period of two months from the date a certified copy of the order is produced before the concerned authority.

Order Date :- 10.7.2024

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(Alok Mathur,J.)