Neutral Citation No. - 2024:AHC:12053-DB

AFR

Reserved

Court No. - 21

Case :- SPECIAL APPEAL No. - 637 of 2023

Appellant :- Amity University And 4 Others
Respondent :- State Of U P And 3 Others
Counsel for Appellant :- Rahul Chaudhary
Counsel for Respondent :- C.S.C.,Ajal Krishna,Rijwan Ali Akhtar,Siddharth Khare

Hon'ble Manoj Kumar Gupta,Acting Chief Justice
Hon'ble Donadi Ramesh,J.

(Per: Manoj Kumar Gupta, Acting Chief Justice)

1. The instant intra court appeal under Chapter VIII Rule 5 of the Rules of the Court is directed against the judgement of learned Single Judge dated 02.08.2023 by which the writ petition filed by the second respondent (student) was allowed and the order dated 25.02.2020 rusticating him for six months, the appellate order dated 16.03.2020 passed in appeal reducing the period of rustication to three months, were quashed. The appellant-University was also directed to issue a fresh mark sheet to the student treating him as a regular student and to evaluate him out of 100 marks, which had the effect of removing the ‘B+’ Cap and also not make any reference to the disciplinary action taken against the student in the mark sheet and delete the endorsement “reappearance in September, 2020”.

Facts:

2. The second respondent (student) was admitted to B.Tech Course (Computer Science) in the appellant-University in the academic session 2016-2020. He cleared six semesters till April, 2019. While in 7th Semester, he was suspended by order dated 15.11.2019 with immediate effect by appellant no.4 for act of indiscipline by indulging in marking of unauthorised and fake "ODs" (on duty) attendances. Thereafter, the University conducted disciplinary proceedings against him and several others. By order dated 25.02.2020, the second respondent was rusticated from the University for six months w.e.f. 15.11.2019, the date of his suspension. Aggrieved thereby, the second respondent preferred an appeal to the Vice-Chancellor. The appeal was disposed of by reducing the period of rustication from six months to three months. The second respondent thereafter preferred the writ petition before this Court, which has been allowed by the impugned judgement.

Findings of the Writ Court:

3. The Writ Court has held that there was violation of principles of natural justice, as the student was not supplied the adverse material nor the enquiry report. He was also not served with any formal charge-sheet containing statement of charges and, therefore, the order of rustication and the appellate order were held to be illegal. The Writ Court also took into consideration the period of rustication of three months already undergone, while under suspension and taking a lenient view, with the object of reformation, concluded that the punishment imposed was disproportionate. Consequently,

the order of punishment was held to be arbitrary and illegal and was set aside. In consequence, further reliefs, as noted above, were also granted.

Submissions of learned counsel for the appellants:

4. Sri G.K. Singh, learned Senior Counsel for the appellant-University submitted that the findings recorded in the impugned order of the learned Single Judge that there was no proof of service of notice or intimation of charges to the student and the punishment awarded is disproportionate, are perverse and contrary to the material available on record. In support of the said contention, reliance has been placed on the written statement of the student addressed to the Enquiry Committee dated 06.12.2019, the whatsapp chat of the student, the minutes of the Disciplinary Committee meeting dated 11/12.02.2019, the statement of other students- Aabhushan Verma, Riya Agarwal and Lina Gupta; various correspondence between the University and the second respondent. It is submitted that the student was well aware of the charges against him and he never complained, even at the time of filing appeal that he was not aware of the charges or the nature of enquiry or that he was not associated with the enquiry. It is submitted that the student has not suffered any prejudice, as the University had taken action not only against the second respondent but against various other students involved in the marking of unauthorized “ODs” as well as against faculty members, who were found guilty of dereliction of duties. It is further submitted that under the Regulations a minimum of 75% attendance was essential and if a student falls short of attendance, he is not permitted to appear in End-Semester-

Examination. In the present case, the student being under rustication, was not having the requisite attendance, therefore, in terms of Regulation 10(2)(h) of R-01 B+ Cap was rightly imposed. It is further submitted that in any event, since the rustication order has been set aside on the ground of violation of principles of natural justice, the appellant should have been given option to provide opportunity to the student and pass fresh order instead of allowing the writ petition in toto. This was all the more important as the enquiry proceedings related not only to the second respondent but a large number of other students as well as faculty members, who were involved in the racket. It is submitted that in most of the cases, the punishment orders have already been implemented or are being implemented and the adverse finding recorded by learned Single Judge touching upon the validity of the enquiry proceedings, without liberty to hold fresh enquiry, will have very wide ramifications.

Submission of learned counsel for the second respondent:

5. Shri Ashok Khare, learned Senior counsel appearing for the second respondent submitted that the findings recorded in the impugned judgement are perfectly valid. The enquiry stood vitiated, as no formal charge-sheet was ever served on the second respondent; that he was not given opportunity to cross-examine the witnesses; that adverse material was not supplied to him; the enquiry report was also not made available to him. He further submitted that regulation relating to imposition of B+ Cap was applicable only to a case where a student reappears in an examination i.e., where he has failed in the

main examination and not to a case where a student could not appear in the main examination because of rustication, as such, the direction given by learned Single Judge to remove B+ Cap is fully justified. It is also urged that the action of the University in not permitting the student to fill examination form of VII Semester Examination even before he was placed under suspension on 15.11.2019 was wholly illegal and malafide.

Analysis:

6. The appellant is an autonomous University constituted under the Amity University Uttar Pradesh Act, 2005. Under the said Act, the University has framed "Regulations on Conduct of Examinations, Scheme of Evaluation and Discipline Among Students in Examinations". Regulation 10 of R-01 deals with attendance and the relevant part thereof is extracted below:

> "**10. (1) ATTENDANCE**
>
> (a) Students are expected to have 100% attendance.
>
> (b) Relaxation of maximum 25% may be allowed to cater for sickness or other valid reasons beyond the control of the students for which written permission of HoI/ HoD is mandatory.
>
> (c) A student whose attendance is less than 75%, whatever may be the reason for shortfall, will not be permitted to appear in the End Semester Examination (ESE).
>
> However, Student may be permitted by Hon'ble Vice Chancellor with B+ cap, by condoning attendance up to 5% in a course, under the following circumstances:
>
> i) If student falls sick for a certain period during the semester.
>
> ii) If student participates in any events, nationally/internationally, representing the University.
>
> (d) Under extreme special circumstances, Vice Chancellor may condone attendance upto 5% below 75% without B+ Cap on grade on the recommendation of HoI and Committee constituted for the purpose.
>
> (e) Every teaching faculty handling a class will take attendance till the last session of the course as per LTP and session plan. The percentage of

attendance upto this day will be calculated and forwarded to Examination Department by the HoI for issue of Admit Cards.

(f) If a student is continuously absent for a period of two weeks without permission, a notice will be sent to the student and to his parents / guardian by the Course Faculty, Programme Leader and HoI/HoD, with a copy to the Office of Pro VC (A)/Dean. Online system for better monitoring must be developed.

(g) Attendance will be continuously monitored. Students falling short of 75% attendance will be counseled/warned with intimation to parents by HoI / HoD.

Fornightly basis - Course Faculty

Monthly basis - Programme leader

Mid-Semester - HoI/HoD

End-Semester - HoI /HoD.

(h) If a student remains absent continuously for 30 days without permission, his name will be struck off by the HoI. Such a student may apply for re-admission. The HoI will examine his performance in all semesters and back log of papers and forward recommendations to Pro VC(A)'s/Dean office to decide as to whether he should be given re-admission or not. Based on the recommendations, decision for re-admission and the semester in which re-admission is to be given will be taken. The student granted re-admission will be required to pay the prescribed readmission fee and will be governed by Academic Regulations given above. The attendance will be calculated from the commencement date of the semester and not from the date of re-admission.

(i) "A student whose attendance is between 70-75% and who does not fall under Para 10 (1)(d), may be allowed to appear in the End Semester Examination (ESE) after obtaining written permission of Vice Chancellor subject to the condition that he/she will be awarded letter grade not exceeding B+." This provision will not be applicable to late admissions, lateral admissions and transfer cases. If a student's attendance is more than 75% in majority of the courses and has attendance between 70 to 75% in few courses then his/her case will be considered for special permission of Vice Chancellor. The admit card should indicate "Specially Permitted with B+ cap/ without B+ cap".

A Sub-Committee constituted as under will decide the category of student whether his/her case falls under 10(1)(d) or 10(1)(i).

(a) Pro Vice Chancellor / Dean/Sr. HoI : Chairman (Nominated by Vice Chancellor)

(b) One Dean of Faculty : Member

(c) One Sr. Head of Institution : Member

(d) One Sr. Professor : Member

(e) CoE : Member Secretary

Recommendation of the Committee will be placed before Vice Chancellor for approval before issue of Admit Card clearly indicating the two categories."

7. A student, whose attendance is below 75%, is not permitted to appear in the end semester examination. Regulation 10(2), which relates to action in cases of shortfall of attendance is extracted below:-

"**(2) Action in Cases of Shortfall of Attendance**

(a) A student, whose attendance is below 75%, will not be permitted to appear in the ESE and will be awarded 'DE' grade in that paper and treated as Fail in that subject..

(b) 'DE'/F grade students (Debarred due to shortage of attendance or Fail in a course unit) are required to repeat the course unit in the next corresponding semester and reappear in the normal schedule of ESE of that paper i.e. 'F' grade student of 3rd semester may reappear in that course unit in the 5th semester.

(c) 'DE' grade students will have to apply to the HoI for re-appearing within the first week of the commencement of the corresponding semester. The HoI will assign Guided Self Study Courses & assignments under the faculty for the concerned courses, of which, regular assessment records will be put up by the faculty to the HoI. HoI will forward the recommendations for grant of permission to re-appear in that course unit. Only on grant of permission, a student will be allowed to reappear.

(d) A student whose attendance is 75% or above but is unable to appear in a paper/papers due to valid unavoidable reasons and with proper written permission from HoI will be awarded 'I' grade. Students absent without valid reasons will be marked 'AB'.

(e) 'I' grade students other than those of Final Semester should apply to the HoI within seven days after the last paper for re-appearing for which the examination will be held within 30 days of the last paper and 'I' grade will be converted to appropriate letter grade not exceeding B+.

(f) The final year students who have obtained 'DE' grade may apply to re-appear in those Courses of final two semesters only in the Special Supplementary Examinations to be held within 30 days of the declaration of Results.

(g) The final year students who have obtained 'I' grade may apply to re-appear in the subjects of Final Semester only in the Special Supplementary Examination to be held within 30 days of the declaration of Results.

(h) In all cases of re-appearing ('DE', 'AB', 'I' & 'F' grade students), the marks obtained by the students who have re-appeared will be converted to the appropriate letter grade not exceeding B+.

(i) The 'I', 'DE', 'AB' & 'F' grade students are allowed only one chance to reappear.

(j) A student who has qualified in a course unit is not allowed to re-appear in that course unit subject to conditions as given in para 20 (4).

(k) Students will make up academic deficiency by attending extra classes organized by the institution for Guided Self Study Course (GSSC) during PAP/PAW/ YB period as applicable.

(l) 70% attendance will be of the actual class attended by the student excluding the official duty period. The attendance including OD should not be less than 90% for allowing student to appear in End Semester Examination."

8. Regulation 11 deals with computation of attendance, which is as follows:

"**11. COMPUTATION OF ATTENDANCE**

(1) Attendance at lectures, tutorials, practicals, clinicals, sessionals, if any, held during the academic session shall be counted.

(2) Attendance at NCC/NSS camp, Amity Cadet Corps/ Amity Military Training Camp, seminars/ workshops organized by other Institutions/ Universities as approved by the University or any such other training organized by the University during the session shall be taken as full attendance at lectures/ practicals/ tutorials on each such day of camp/ training and the days of journey to such camp/ training (excluding the period of holidays/vacations).

(3) Participation as a member of the University/ Constituent Unit team in any inter-University competition games & sports and/or other extra curricular activities shall be taken as full attendance on the days of such competition and the days of journey for participating therein.

(4) Participation as a member of a recognized/approved team in any competition shall be taken as full attendance. The period will also include the days of actual coaching, competition and the days of journey for participating therein.

(5) In determining the exact number of minimum requisite attendance in lectures, tutorials, seminars, moots, practicals, sessionals etc. fraction shall be ignored.

(6) For re-admission of a student whose name was struck off from the rolls due to continuous absence from the classes without information, attendance in lectures, tutorials, practicals etc. in that semester/ trimester/year prior to re-admission shall be counted.

(7) "Attendance for the normal admission cases will be counted from the date of commencement of the programme of that semester. However, for late

admission/lateral admission/ transfer case, the attendance will be counted from 4th day of the payment of fee or the date of registration whichever is earlier".

(8) In case of International Students of 1st Year (1st Semester), attendance will be counted from the date of Registration."

9. A perusal of Regulation 11 reveals that attendance is also awarded, when a student participates in any training camp, seminar/workshop, sport event etc., apart from the attendance obtained in usual course in attending lectures, tutorials, practicals, clinicals and sessionals.

10. The attendance earned by a student, while participating in trainings, seminars, workshops etc., or while participating in extra-curricular activities are called "ODs".

11. The respondent-University had developed a procedure for marking of "ODs" attendances by an online system, which was accessible through the login ID and password of the authorized faculty members. The charge against the second respondent was that of marking unauthorised "ODs" for other students, although not entitled, having not participated in any of the permissible activities on the relevant date.

12. The respondent-University initially constituted a departmental committee to hold preliminary enquiry. It identified the second respondent and one Bhanu Sharma of the Amity School of Engineering and Technology involved in marking of fake "ODs". During course of enquiry, names of other students from other departments of the University also surfaced. The Departmental Enquiry Committee recommended for a proctorial enquiry, as it was a cross institutional matter. The Proctorial Board consequently held the

enquiry. After the names were identified, the matter was handed over to the Institutional Committee constituted on 11.11.2019 consisting of:

Dr. Manoj Kumar Pandey – Chairman

Dr. Abhay Bansal – Chairman

Members

Dr. Nitashhasteer

Dr. Madhuri Kumari

Prof. Vivek Kumar

Dr. R.K. Kapur

Dr. Basant Singh Sikarwar

Dr. Abhilshekh Singhal

Dr. H.P. Singh

Dr. R.K. Tomer

Dr. Sai Savita

13. The Committee interrogated the second respondent and another student Bhanu Sharma on 13 Nov 2019. These two students gave the name of three more students and one faculty and one staff member who were sharing HOI Password with them. Further, the second respondent gave names of three faculty members who were also involved in the fake OD cases. Based on the above inputs, the Committee interrogated the following students, staff, and faculty members:

Students:

1. Mr. Prakhar Nagar

2. Mr. Bhanu Kumar

3. Mr. Tushar Puri

4. Mr. Prabal Gupta

5. Mr. Srijan Sharma and

Faculty and Staff Members:

a. Dr. Divya Upadhyay

b. Ms. Shanu Sharma

c. Dr. Sumita Gupta

d. Mr. Dev Kumar

e. Mr. Satish Kumar.

14. On 15.11.2019, the second respondent was placed under suspension for indulging in act of indiscipline, namely, (a) indulging in or encouraging any form of disruptive activity connected with tests, examinations or any other activity of the University or the college or the institution, (b) indulging in undesirable activities.

15. The Committee submitted its report on 02.12.2019 and recommended for action being taken against various students including the second respondent and also certain faculty and staff members.

16. The case of the University is that the second respondent and his parents thereafter sent various e-mails to different authorities of the University and started meeting them. The University, in order to ensure fair-play and transparency, decided to go for enquiry by a University level committee which was constituted on 11.12.2019 to enquire into the facts leading to

marking of fake ODs. The following were the members of the said Committee:-

1. Dr. D.K. Bandyopadhyay, **Chairman**

Members

2. Dr. Sujata Khandai
3. Prof. R.K. Kapur
4. Dr. Alpana Kakkar
5. Dr. Manoj Kumar Pandey
6. Dr. Shefali Raizada
7. Ms. Mala Dev

Invited Member

8. Dr. Manohar Sajnani

17. The said Committee called various students for interrogation on 12th and 13th December, 2019. The second respondent as well as 31 other students appeared before the Committee for interrogation and based on the interrogation, submissions made by the students and analysis of whatsapp chats, the Committee recommended for action being taken against the second respondent, various other students and certain faculty members.

18. According to the enquiry report, the name of the second respondent was mentioned by the students – Apoorv Goel, Riya Agarwal, Shambhavi Sharma, Naina Gupta and Aabhushan Verma. The Committee found evidence of the second respondent having copied password of Amizone of Head of Institute from Mr. Satish. He was also found guilty of putting attendance at night from his residence by using the password. The Committee was of the opinion that

the misconduct was of a serious nature and amounted to a criminal offence, but taking a sympathetic view, to protect the interest of the students, it recommended for different punishments for different students, based on the seriousness of misconduct. It recommended for rustication of the second respondent for a period of one year. Dr. Abhishek Singhal, Faculty Member, who failed to perform his duties as Deputy HoD with utmost care, was replaced by another person. Dr. Upadhya, who had given full attendance without teaching was separated from the Department and Dr. Nidhi and Ms. Shanu Sharma from PL ships immediately. The Committee also concurred with the recommendation of the Institution Committee Report dated 2.12.2019 for separation of Mr. Dev Chaudhary, AP-I, Department of CSE, Mr. Satish Kumar, Executive Secretary, Department of CSE.

19. Thereafter the Students Disciplinary Committee held its meeting on 11.02.2020 and taking a lenient view, it decided to rusticate the second respondent only for six months. The findings of the Students Disciplinary Committee in relation to the second respondent are as follows:-

> "He has accepted that he had been marking OD's of other ASET student. However, he has claimed that the login ID and password was given by an ASET Faculty every time as the Faculty had asked him to help in marking the large number of authorized OD's of ASET students. However, he has not been able to explain the unauthorized/false OD's he marked for his friends."

20. Based on the recommendation of the Students Disciplinary Committee dated 11.02.2020, the second respondent was rusticated by order dated 25.02.2020 for six months starting from his suspension date i.e. 15th

November, 2019. He was required to submit an undertaking of future good behaviour signed by him and his parents.

21. The second respondent aggrieved thereby preferred appeal before the Vice Chancellor. The Vice Chancellor, taking into consideration the career of the student and other facts presented before her during personal interaction, reduced the rustication period to three months from the date of his suspension i.e. 12th November, 2019.

22. It is evident from the facts narrated above that the University having regard to the seriousness of the matter got the enquiry conducted at three different levels - initially by a Departmental Committee; thereafter by a Proctorial Board; and finally by University Level Committee.

23. The second respondent was well aware of the fact that all the aforesaid enquiries were in relation to marking of fake and unauthorised ODs. It is also an admitted fact that the mobile phone of the student was seized by the University in connection with the enquiry. By e-mail dated 23.11.2019, the second respondent was informed that effort was made to contact him for returning his mobile phone, but he had not turned up. He was, therefore, advised to come and take back his mobile phone. The e-mail is to the following effect:-

> "**Your mobile has been seized for doing further investigations for finding the fact related to fake official duty (OD) …… by you against payment received by you in cash from Kumar Bhanu Sharma**.
>
> We are trying to give your mobile phone since last one week but you have not collected till now.

You are advised to collect your mobile phone as early as possible."

24. The second respondent responded to the said mail on the same date and alleged that he came to the University to get back his mobile phone. However, he and his parents were told by the Faculty that they would prepare a letter signed by all Committee members by 21.11.2019 relating to return of mobile phone and would then return the mobile phone. He returned, as the said letter was not ready.

25. It is evident from the aforesaid exchange of e-mails between the second respondent and the University that he was aware of the specific charge that enquiry was being held against him in relation to marking of fake ODs. The second respondent admittedly appeared before the Enquiry Committee on 16.12.2019 and gave the following letter in writing:-

The Committee
Sector-125, NOIDA
Amity University

6th December 2019

Respected Sir,

Prakhar Nagar of batch 2016-2020 of B. TECH CSE would like to state that I got password from Dev Sir. Dev Sir used to get the password from Satish Sir.
One or two times. I have marked OD of a student who are not present in the university.
In 2016 when I came to college seniors used to sit with Dev Sir to mark ODs, so the students used to sit with Dev Sir and mark OD's.
Last sem I have complained regarding this to Dev Sir and given the clips of Akash Gupta and Bhanu Sharma and Satish Sir **as they were involved in taking money.** During the last sem Satish Sir was absent for 15 days approx. so during that time they didn't have the HOI login password.
Thank You

Your Sincerely
Prakhar Nagar
7 CSE 44
A2305216644
Sd./ illegible
16.12.2019

26. In the appeal preferred by the student before the Vice Chancellor, he stated as follows:-

To,
Honourable Vice Chancellor
Amity University, Sec 12, U.P>

6th March 2020

Subject : Review Appeal

Respected Madam,

I Prakhar Nagar would humbly request you to review the office order released by the university authorities dated on 25th February, 2020.

Madam I am your student my career and life is on intake. I once again with my folded hands would like to request you to review the decision. I have already submitted the information to the enquiry committee regarding the indiscipline.

Thank you
Yours sincerely,
PRAKHAR NAGAR
2016-2020
A2305216644

27. In para 12 of the writ petition, the student admits that between *"6.11.2019 to 25.02.2020 his parents were called by the University and he alongwith his parents met the Dean, Students Welfare, Proctor and Members of the Enquiry Committee constituted for such purpose on several dates."*

28. It is evident from the facts narrated above that the second respondent was aware of the gravamen of the imputations against him; he participated in the enquiry which was held at three different levels and during pendency of enquiry, he never complained of any fault in the enquiry proceedings or violation of any principle of natural justice as may have caused prejudice to him.

29. It is not disputed that the charge against the second respondent would fall under the act of indiscipline (quoted in paragraph 14) which were clearly specified in the suspension order.

30. The statement of the student himself admitting that he had on some occasion marked fake ODs of other students and that money was being realised from students for marking of fake ODs; the statement of other students in which also his role in the entire episode was clearly mentioned and the whatsapp chats from his mobile phone, the correctness of which was never disputed by him, constituted material evidence before the Committee to arrive at the finding of guilt. Concededly, the standard of proof in such an enquiry is not the same as in a criminal trial. Some of the relevant portions of whatsapp chats are extracted below:-

"Payment can be done via cash or through PayTM.

15/10/18,	20:00 -	Prakhar Nagar	:	Bhara tune yeh??
15/10/18,	20:00 -	Z Kartik jain	:	Nhi
15/10/18,	20:01 -	Z Kartik jain	:	Bharta hu abhi
15/10/18,	20:05 -	Prakhar Nagar	:	Haa
15/10/18,	22:35 -	Prakhar Nagar	:	Kal cash ya paytm dediyi

15/10/18,	22:40 -	Z Kartik jain	:	Okayy
15/10/18,	22:40 -	Z Kartik jain	:	350 cash dedunga
15/10/18,	22:40 -	Prakhar Nagar	:	Haan
29/10/18,	10:13 -	Z Kartik jain	:	Aaj 4-5 ki od lag sakti hai?
29/10/18,	10:13 -	Z Kartik jain	:	Please
29/10/18,	10:14 -	Z Kartik jain	:	Attendance varna kam ho jaayegi
29/10/18,	14:19 -	Z Kartik jain	:	Bhaiya 4-5 maths ki hai please lagwa dena
30/10/18,	12:30 -	Z Kartik jain	:	Kal ki od lag jaayegi naa?”

19/12/18,	13:40 -	Z Vansh Passi	:	OD form maine bhar diya hai
19/12/18,	13:40 -	Z Vansh Passi	:	Aapko kaha aakr du?
19/12/18,	13:46 -	Z Vansh Passi	:	<Media omitted>
19/12/18,	17:16 -	Z Vansh Passi	:	Bhaiya lagwado OD plss
19/12/18,	17:16 -	Z Vansh Passi	:	Date :- 18/12/18
20/12/18,	09:10 -	Z Vansh Passi	:	Bhaiya plss lagwa dijiye
20/12/18,	09:23 -	Prakhar Nagar	:	haa
20/12/18,	09:25 -	Z Vansh Passi	:	Aaj lag jayegi na!
20/12/18,	09:25 -	Prakhar Nagar	:	haq
20/12/18,	09:34 -	Z Vansh Passi	:	OK
20/12/18,	22:30 -	Z Vansh Passi	:	Bhaiya abhi tk nhi lagi hai attendance aap plss dekhlo ek baar
20/12/18,	22:30 -	Prakhar Nagar	:	yaar wo miss time pura hogaya tha isliye kal lag jayegi.
20/12/18,	22:30 -	Z Vansh Passi	:	OK bhaiya Thankyou

21/12/18, 09:24 - Z Vansh Passi : Bhaiya aaj yaad se lagwa dena plss

21/12/18, 10:12 - Prakhar Nagar : laga di

21/12/18, 10:31 - Z Vansh Passi : Thankyou so much bhaiya

16/01/19, 10:18 - Z Vansh Passi : Bhaiya??

16/01/19, 10:18 - Z Vansh Passi : Aap abhi free ho meko aapse milna h kuch imp hai

18/01/19, 17:30 - Z Vansh Passi : Thursday->BEE tute (9:15-10:10)

Law (10:15-11:10)

Maths (11:15-12:10)

Chemistry (12:15-1:10)

18/01/19, 17:31 - Z Vansh Passi : Vansh-A2305218407

Rishi—A2305218408, bhaiya dono ki laga dena

18/01/19, 17:34 - Z Vansh Passi : Friday - > Law(9:15-10:10)

Chemistry (10:15-11:10)

Maths (12:15-01:10)

Engineering graphics (1:15-2:10)

Engineering graphics (2:15-3:10)

18/01/19, 17:36 - Z Vansh Passi : Bhaiya pls laga dena

20/01/19, 23:59 - Z Vansh Passi : Bhaiya kal lagwa dena plss

21/01/19, 13:01 - Prakhar Nagar : lagadi khush reh

21/01/19, 15:21 - Z Vansh Passi : Thankyou so so so much bhaiyaa!

07/03/19, 11:51 - Z Vansh Passi : Bhaiya abhi free ho?

11/03/19, 15:22 - Z Vansh Passi : <Media omitted>

11/03/19, 15:22 - Z Vansh Passi : <Media omitted>

11/03/19, 15:22 - Z Vansh Passi : EVS ke alawa baaki sbki od lagwa do !

14/03/19,	15:00 -	Z Vansh Passi	:	Monday-> 9-11 Technical comm. Wednesday - > 2-5 Basic electrical engg.
14/03/19,	15:13 -	Z Vansh Passi	:	Bss yeh do lagwaa do plss
26/03/19,	22:55 -	Prakhar Nagar	:	Sun
26/03/19,	22:55 -	Prakhar Nagar	:	Sogaya Kya
26/03/19,	22:56 -	Prakhar Nagar	:	Pool party rakhi hai
26/03/19,	22:56 -	Prakhar Nagar	:	4 ko 12 baje se
26/03/19,	23:06 -	Z Vansh Passi	:	Kaha pr hai?
26/03/19,	23:07 -	Prakhar Nagar	:	15 min dur amity se
26/03/19,	23:07 -	Z Vansh Passi	:	Kal milke batata hu
26/03/19,	23:07 -	Prakhar Nagar	:	Haan 1400 price
26/03/19,	23:07 -	Z Vansh Passi	:	Meri class k bachhe aa skte h?
26/03/19,	23:07 -	Prakhar Nagar	:	Haan
26/03/19,	23:07 -	Prakhar Nagar	:	Koi dikkat nahi
26/03/19,	23:07 -	Z Vansh Passi	:	Ohkk
26/03/19,	23:08 -	Prakhar Nagar	:	Bas class ke laiyo
26/03/19,	23:08 -	Z Vansh Passi	:	Hn hn
26/03/19,	23:08 -	Prakhar Nagar	:	Red label piyenge
26/03/19,	23:08 -	Z Vansh Passi	:	
26/03/19,	23:19 -	Prakhar Nagar	:	Kal tak batadiyo
22/04/19,	13:34 -	Z Vansh Passi	:	Bhaiyaa! Yeh ntcc kya hai?
22/04/19,	13:34 -	Prakhar Nagar	:	Hai ek chutiyapa amity ka
24/04/19,	21:56 -	Prakhar Nagar	:	Fbl kaunsi hai
24/04/19,	22:14 -	Z Vansh Passi	:	German
24/04/19,	22:15 -	Z Vansh Passi	:	Shreya ki class m hi hu
24/04/19,	22:15 -	Prakhar Nagar	:	Acha

25/04/19,	00:01 -	Z Vansh Passi	:	Bhaiya ??
25/04/19,	00:01 -	Prakhar Nagar	:	Hanji
25/04/19,	00:01 -	Z Vansh Passi	:	German ka ppr leak hua hai kya?
25/04/19,	00:01 -	Prakhar Nagar	:	Raat mein patah chalega
25/04/19,	00:01 -	Z Vansh Passi	:	Shivam keh rha hi ki leak ho gya hai
25/04/19,	00:02 -	Prakhar Nagar	:	Nahi hua abhi german ka kisi ke pass nahi hai
25/04/19,	00:02 -	Z Vansh Passi	:	OKK
25/04/19,	00:02 -	Z Vansh Passi	:	Jb bhi kuch pta chle toh bta dena
25/04/19,	00:02 -	Prakhar Nagar	:	Haa
25/04/19,	01:36 -	Prakhar Nagar	:	Mila phir
25/04/19,	01:36 -	Z Vansh Passi	:	Nhi
25/04/19,	01:36 -	Z Vansh Passi	:	Shivam isn’t responding!
25/04/19,	01:37 -	Z Vansh Passi	:	Btao hua bhi hai leak ya nahi?
25/04/19,	01:37 -	Prakhar Nagar	:	Hua toh hai frnch ka kisi ko chaiye ho
25/04/19,	01:37 -	Prakhar Nagar	:	Toh 500 mein toh
25/04/19,	01:37 -	Prakhar Nagar	:	Lelo
25/04/19,	01:37 -	Prakhar Nagar	:	Baki german
25/04/19,	01:37 -	Z Vansh Passi	:	Poochhaa maine ekdo se mana kr reh hai
25/04/19,	01:38 -	Z Vansh Passi	:	Baki german?
25/04/19,	01:38 -	Prakhar Nagar	:	Ka Bhi Keh diya hai nikalgaya hai
25/04/19,	01:38 -	Z Vansh Passi	:	Achha

25/04/19,	01:38 -	Z Vansh Passi	:	<Media omitted>
25/04/19,	01:38 -	Z Vansh Passi	:	Yeh aya hai kahi se
25/04/19,	01:40 -	Prakhar Nagar	:	Abe chutiyapa ignore
25/04/19,	01:40 -	Z Vansh Passi	:	German ka kitne ka hoga??
25/04/19,	01:40 -	Prakhar Nagar	:	Yaar wo jab niklega tabh
25/04/19,	01:40 -	Z Vansh Passi	:	ohkk
25/04/19,	01:40 -	Prakhar Nagar	:	Patah chalega
25/04/19,	01:40 -	Z Vansh Passi	:	Genuine hoga na?
25/04/19,	01:40 -	Prakhar Nagar	:	Haan
25/04/19,	01:41 -	Z Vansh Passi	:	Bta dena jaise bhi ho
25/04/19,	01:41 -	Prakhar Nagar	:	Ok
25/04/19,	01:50 -	Prakhar Nagar	:	German chaiye
25/04/19,	01:50 -	Z Vansh Passi	:	Kitne?
25/04/19,	01:50 -	Prakhar Nagar	:	2k
25/04/19,	01:50 -	Z Vansh Passi	:	500 ka aya hai ek se offer!
25/04/19,	01:51 -	Prakhar Nagar	:	Yaar mein agey se ata hai puchta hoon
25/04/19,	01:51 -	Z Vansh Passi	:	Hn bhaiya
25/04/19,	01:51 -	Prakhar Nagar	:	Agar esa hai
25/04/19,	01:51 -	Z Vansh Passi	:	Hosteller h ek keh rhi hai 500! Same aya toh ok nhi toh paise vapis
25/04/19,	01:52 -	Prakhar Nagar	:	500 ka offer hai ab

06/09/19,	08:36 -	Z Shreya Amity	:	3-5 od laga doge
06/09/19,	08:36 -	Z Shreya Amity	:	dad ka bday h
06/09/19,	08:36 -	Z Shreya Amity	:	jaldi ghr jaana h
06/09/19,	11:29 -	Z Shreya Amity	:	batado pls
06/09/19,	11:32 -	Prakhar Nagar	:	Ok

02/11/18,	16:15 -	z manav asija	:	Bhai laga do please 5 k badd nahi lag paegi
02/11/18,	16:16 -	Prakhar Nagar	:	laga di
02/11/18,	16:24 -	z manav asija	:	Thankyou
03/11/18,	16:13 -	Prakhar Nagar	:	arush tera bhai hai?
03/11/18,	16:13 -	z manav asija	:	Asija?
				Family friend

05/08/19,	16:09 -	z manav asija	:	Bhai laga do please
05/08/19,	17:34 -	Prakhar Nagar	:	Laga di
05/08/19,	18:11 -	z manav asija	:	Thanks bhai

02/11/18,	13:38 -	Z Akash Nigam	:	Jasmine ki 1st nov ki nhi lgi bhai
02/11/18,	13:56 -	Z Akash Nigam	:	<Media omitted>
02/11/18,	13:57 -	Z Akash Nigam	:	Jasmine enrollment no. A2305218432
02/11/18,	13:57 -	Prakhar Nagar	:	lagadi

31. It is now well settled that violation of natural justice is not a straight jacket formula but depends on facts of each case. Where enquiry is not against any particular individual but broad based and involves a large number of persons, it is not always necessary to hold detailed enquiry against each individual. If on examination of facts, it emerges that a fair procedure has been adopted without causing any material prejudice to any person then the courts have declined to interfere. Thus, in **the Bihar School Examination Board vs. Subhash Chandra Sinha and others**[1], where enquiry was on charge of mass-cheating, it was found not necessary to give opportunity of

1 1970 (1) SCC 648

hearing to individual candidates. The relevant observation in this regard is as follows :-

> **13.** This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.

32. Constitution Bench of the Supreme Court in **ECIL v. B.Karunakar[2],** considered the effect of non-supply of enquiry officer's report to the delinquent. While it was held that non-supply of the enquiry report would result in breach of principles of natural justice, but in every case, non-supply of report would not *ipso facto* result in the proceedings being declared null and void, unless the delinquent is able to show any serious prejudice to him. The majority view in para 30(v) is extracted below :-

> "*30*. (*v*) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate

2 1992 (1) SC7 09

> punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an 'unnatural expansion of natural justice' which in itself is antithetical to justice."
>
> (emphasis supplied)

33. The same principle came to be identified in the "useless formality" theory. It provides a yard stick for judging whether a particular violation of any principle of natural justice would render the action illegal and void. It stipulates that if no real prejudice is evident then it would be empty formality to strike down the action on ground of violation of principles of natural justice. In **Aligarh Muslim University and others vs. Mansoor Ali Khan**[3]**,** "useless formality" theory has been explained thus :-

> "25. The "useless formality" theory, it must be noted, is an exception Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in **M.C. Mehta**[4] referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always

3 (2000) 7 SCC 529
4 (1999) 6 SCC 237

> be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis it may depend on the facts of a particular case."

34. In the instant case, we do not find any such violation or unfair-play which may vitiate the entire disciplinary proceedings *albeit* there may have been certain procedural lapses. One fact which has a material bearing is that the second respondent has already passed the course, therefore, even if we think of doubting the correctness of the procedure, in normal course, the matter requires to be remitted to the concerned authority for resuming the enquiry from the stage it stood vitiated. This would visit the student with far more serious consequences.

35. One of the concerns of the University expressed during course of the hearing of the instant appeal, was that the episode involved a large number of students and also Faculty members. The University, as noted above, had taken action not only against the second respondent but against several other students and also Faculty members. In most of the cases, the punishment orders have been duly implemented without any challenge. The indiscipline was of such great magnitude that the University despite having taken very lenient view in the interest of students could not have absolved the students and given them clean chit as it would have sent a wrong message.

36. In order to buttress the submission that the University had taken lenient view in the matter, it is pointed out that the following steps were taken in respect of the second respondent -

(a) Waiver of readmission charges of Rs.15,000/- which are payable for late registration.
(b) special permission for registration for VIIIth semester.
(c) permission for registration for major project (in absence of which that would gone to next academic year and the complete year of the petitioner would have been wasted).
(d) Viva of minor project of VIIth semester

37. Moreover, in appeal the Vice Chancellor also taking a lenient view reduced the rustication period from six months to three months.

38. The student had undergone the rustication period of three months and on account of which he could not appear in the 7th semester examination when it was due.

39. We feel that it would be impracticable as well as inequitous to direct holding of fresh enquiry. In **Shivam Kant vs. Union of India**[5]**,** the direction of this Court to hold fresh enquiry against the student of IIT Kanpur, as previous enquiry was found to be violative of principles of natural justice, was not approved by the Supreme Court taking into consideration the fact that the student had already suffered and any further enquiry would prolong his agony. The relevant observations in this regard are as follows :-

> "4. Remand of the case by the High Court to Senate in such case is uncalled for as would prolong the agony of students. They have already suffered for sufficient period. No further action need be taken by the Senate as against the students. However, we direct that the students involved in the case to maintain the good behaviour and in case they again involve in any kind of similar misconduct, let the matter be reported to this Court. We will direct appropriate action against them, if considered necessary."

5 2018 SCC OnLine SC 2923

40. In view of the above discussion, we do not agree with the conclusion arrived at by learned Single Judge that the enquiry stood completely vitiated and should be treated as *non est* in the eyes of law. We having considered the facts of the case and the present enquiry in the broader context, feel persuaded to uphold the same.

41. One of the contention of Sri Ashok Khare, learned counsel appearing for the second respondent was that the suspension order was passed on 15.11.2019 but the University even on 14.11.2019 did not permit the second respondent to fill the End Semester Examination Form for which it was the last date. Therefore, it had acted arbitrarily. However, we find no force in the submission. It is evident from the facts noted above and the manner in which the enquiry proceeded that the suspension order came to be passed while the Institutional level enquiry in respect of marking of fake ODs against the second respondent and other students was in progress. It has come on record that the Institutional level committee was constituted on 11.11.2019. It interrogated the second respondent and one more student on 13.11.2019 and they disclosed name of three more students, one Faculty member and one staff member, who were involved in the racket. Thus, there was, prima facie, evidence in possession of the University linking the second respondent with the marking of fake ODs and it seems that the University had already decided to place him under suspension so as not to permit him to appear in the end semester examination. The actual order of suspension was issued a day later on 15.11.2019 but this had in no manner caused any prejudice to the second

respondent because after passing of the suspension order, in any case, he could not have appeared in the End Semester Examination. Thus, there was no change in the ultimate result.

42. The issue which remains to be considered is regarding imposition of B+ Cap by the University, the effect of which was that the second respondent was not granted Grade above B+, irrespective of his actual performance. The learned Single Judge had directed the University not to impose B+ Cap on the student taking a lenient view and with the aim of adopting a reformative approach. Although strictly speaking, imposition of B+ Cap may be a necessary consequence of the rustication of the second respondent but in exercise of power in intra-court appeal, we are reluctant to interfere with the relief granted to the student in this regard by the learned single judge. We agree with his view that in matters relating to students, while on one hand, the University has to ensure maintenance of discipline to ensure a conducive academic atmosphere, but at the same time it is also obliged to adopt reformative approach which is critical for bringing back indisciplined students to the main stream. We, therefore, decline to interfere with the ultimate directions issued by learned Single Judge for removal of B+ Cap and from not making any reference to the disciplinary proceedings in his mark sheet as it would definitely visit him with evil consequences all through his career.

43. In the result, the appeal is **dismissed**.

Order Date :- 25.01.2024
Ankit/SL.

(Donadi Ramesh, J) (Manoj Kumar Gupta, A.C.J.)