

Daya Shankar

Vs

High Court of Allahabad and Others Through Registrar and Others

Writ Petition No. 9317

(O. Chinnappa Reddy, K. Jagannatha Shetty JJ)

08.05.1987

JUDGMENT

JAGANNATHA SHETTY, J. -

1. This writ petition under Article 32 of the Constitution is directed against the order dated June 17, 1983 by which the petitioner has been dismissed from the service.
2. The petitioner was a member of the U.P. State Judicial Service. He was appointed as Munsif on January 27, 1979 and posted at Aligarh. When he was working at Aligarh he sought permission of the High Court to study LL.M. course of the Aligarh University. He appeared for 1st semester examination in July 1980. He was found to have used unfair means in the examination. The Registrar, Aligarh Muslim University informed the District Judge, Aligarh that the petitioner was found copying from the manuscript lying with his answer book. The District Judge thereupon communicated all the information to the High Court. Upon receipt of the information, the High Court referred the matter to Vigilance Cell with the direction to conduct necessary inquiry into the matter. The Cell submitted its report on September 18, 1980 which was placed before the Administrative Committee. The Committee resolved that disciplinary proceedings be initiated against the petitioner and he in the meanwhile be placed under suspension. In pursuance of the said resolution the petitioner was placed under suspension and the disciplinary inquiry was entrusted to Hon'ble Mr. Justice H. N. Seth.
3. The Inquiry Officer framed charge-sheet in the following terms :

You appeared in the 1st semester LL.M. examination of the Aligarh Muslim University, Aligarh on July 7, 1980 from 8 a.m. to 11 a.m. and while answering Jurisprudence Paper, you were found using unfair means at about 9.30 a.m. by writing from a manuscript which was lying in between your answer book and question paper by the Invigilator Sri M. Mushir Alam of the Aligarh Muslim University, Aligarh who handed over the answer book and the manuscript to the Head Invigilator Shri Shariful Hasan, Lecturer, Law Department of the said University, thereby lowered your reputation for honesty and integrity and thus you exhibited an unworthy conduct wholly inconsistent with the dignity of the office you occupied.
4. In the course of the inquiry two witnesses were examined on behalf of the prosecution as against three in defence by the petitioner. The Inquiry Officer after considering the evidence submitted a report holding the petitioner guilty of the charge. He also held that he (the petitioner) was

unbecoming of a judicial officer.

5. The above report was considered in the Full Court meeting of the High Court held on August 21, 1982. The Full Court accepted the report of the Inquiry Officer and the findings recorded by him. The Full Court also recommended to the State Government to remove the petitioner from service.

6. On August 26, 1982 the recommendation of the Full Court was sent to the State Government to issue necessary orders. On October 5, 1982 the petitioner filed Suit No. 408 of 1982 in the Court of Munsif, Koil for declaration that he did not use any unfair means in the LL.M. examination. In the said suit the petitioner did not refer to the disciplinary proceeding initiated by the High Court for the malpractices committed by him in the examination. On June 7, 1983 the petitioner moved the Supreme Court with an application to transfer his Suit No. 408 of 1983 from the Court of Munsif, Koil to outside the State of U.P. That is the Transfer Petition No. 189 of 1983 in which this Court on June 7, 1983 issued the following order :

... further proceeding in Suit No. 408 of 1982 entitled Daya Shankar v. Aligarh Muslim University pending in the Court of Munsif, Koil, Aligarh (U.P.) and the enquiry conducted by the High Court be and are hereby stayed.

7. On June 17, 1983 the Governor made an order removing the petitioner from service with immediate effect. The validity of that order has been called into question in the writ petition.

8. Mr. Govinda Mukhoty, learned counsel for the petitioner raised two contentions. Firstly, he contended that the order of removal of the petitioner made on June 17, 1983 was plainly illegal since this Court had stayed the inquiry proceedings on June 7, 1983. Counsel urged that the stay order was transmitted by post from Aligarh to the High Court on June 11, 1983 besides the petitioner personally giving a copy to the Registrar on June 30, 1983. It was also stated that the Registrar of the Supreme Court had sent the stay order on June 8, 1983 and thereafter neither the High Court nor the government had any jurisdiction to proceed with the inquiry or to make final order in the matter.

9. Assuming that a copy of the stay order transmitted by the petitioner and also that sent by the Registry of the Supreme Court was received within a reasonable time in the Registry of the Allahabad High Court, we do not think that the Governor made the order removing the petitioner with the knowledge thereof. The Enquiry against the petitioner was concluded on August 6, 1982 and the Full Court resolved to recommend to the government to remove the petitioner on August 21, 1982. Accordingly the matter was referred to the State Government by the High Court on August 26, 1982. It was only thereafter that the petitioner filed Suit No. 408 of 1982 in the Court of Munsif, Koil and moved the Supreme Court for transfer of the suit and obtained stay order on June 7, 1983. In these circumstances, we cannot accept the contention that the petitioner was removed from service in disobedience of the stay order of this Court. The first contention urged for the petitioner is therefore rejected.

10. It was next urged by Mr. Mukhoty that there was no evidence to support the conclusion that the petitioner had used unfair means in the LL.M. examination and the documents produced by the prosecution in support of the charge are not worthy of acceptance. We gave our anxious consideration to this contention and closely perused the material on record. We have also examined the answer papers written by the petitioner in the said examination. The case made out by the petitioner is that the invigilator Mohd. Mushir Alam (PW 1) has planted manuscript Ex. EP 9 under

the answer book of the petitioner when the latter had gone out to the toilet. When the petitioner returned from the toilet and started writing the answers, the manuscript was recovered from his table. It was alleged that this was deliberately done by Mohd. Mushir Alam since the petitioner did not oblige the former in convicting the accused in a criminal case in which he was interested. No doubt, in support of his contention the petitioner has examined Shri Nagesh Pathak (DW 1) who also appeared in the LL.M. examination alongwith the petitioner. But the Inquiry Officer has considered this evidence and found no substance in the defence. The Inquiry Officer has also found on comparison of answer written for question No. 8 with contents of manuscript (EP 9) that the petitioner did make use of the manuscript in answering question No. 8. We have also perused the answer papers written by the petitioner. The invigilator (PW 1) had marked the portion said to have been copied immediately after taking possession of the answer book. It contains verbatim the first portion of the contents in the manuscript (EP 9) recovered from the petitioner. Apart from that, the last sentence in the answer book was not complete. It was half written. The petitioner could not have gone to the toilet with half written sentence. Evidently he must have come back from the toilet and started copying from the manuscript. While so copying, he was evidently caught red-handed. That is obvious from the contents of answer sheets.

11. In our opinion the conclusion reached by the Inquiry Officer that the petitioner used unfair means is fully justified. No amount of denial could take him away from the hard facts revealed. The conduct of the petitioner is undoubtedly unworthy of a judicial officer. Judicial officer cannot have two standards, one in the court and another outside the court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy. The second contention urged for the petitioner also fails and is rejected.

12. In the result, the writ petition is dismissed. The Transfer Petition No. 189 of 1983 is also dismissed. In the circumstances of the case there will be no order as to costs.

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