

IN THE COURT OF SYED OBAIDULLAH SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 21/13 OF 2023
DATE OF INSTITUTION : 11.12.2023
DATE OF DECISION : 14.03.2024

1. CHAIRMAN BISE KOHAT
2. CONTROLLER EXAMINATION BISE KOHAT AND OTHERS

....(APPELLANTS)

-VERSUS-

SHAHID ULLAH S/O AKRAM KHAN, R/O CASTE MISHTI,
TAPA DARWI KHEL, SHALZARA, TEHSIL CENTRAL,
DISTRICT ORAKZAI

.....(RESPONDENT)

Present: Shaheen Muhammad Advocate, the legal advisor of the appellants

JUDGEMENT

14.03.2024

Impugned herein is the judgment/decree dated 28.11.2023 of the learned Senior Civil Judge, Orakzai vide which the suit of the respondent/plaintiff has been decreed as prayed for.

- (2). The respondent/plaintiff through a suit before the learned trial court sought declaration-cum-perpetual and mandatory injunction to the effect that he is a student of 10th class in Frontier Children Academy (FCA) Mishti Bazar, that he has passed his 9th examination with distinctive marks of 454 out of 550 in the year 2022 from Board of Intermediate and Secondary Education Kohat and subsequently endeavoured to improve his scores by reappearing for the examination, that Government Higher School (GHS) Mishti Bazar was assigned to him as the examination centre but defendant no. 3, Syed Sajjad Hussain Superintendent


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Examination Hall GHS Mishti Bazar arbitrarily relocated the examination venue to Governor Model School Mishti Bazar without providing any valid justification, that he along with other students feeling themselves aggrieved of this act protested against the appellants/defendants demanding the transfer of Superintendent upon which Tehsildar Central Orakzai reached the spot and reported the incident to Deputy Commissioner Orakzai. It was also asserted in the plaint that the respondent/plaintiff was accused of using unfair means during the examination resulting in his disqualification from six examinations on the basis of malafide and personal revenge of defendant no. 3 but later on the Jury Committee hearing the appeal of the respondent/plaintiff reduced the penalty to 03-years and that he repeatedly requested the appellants/defendants to revoke the imposed penalty but of no avail. The appellants/defendants were summoned who appeared before the learned trial court through their representative and legal advisor who contested the suit by submitting a written statement. The pleadings of the parties were culminated into the following issues:

- I. Whether the plaintiff has got cause of action?
- II. Whether this court has got jurisdiction?
- III. Whether the case of using unfair means against the plaintiff is based on malafide and personal revenge of defendant no. 3?

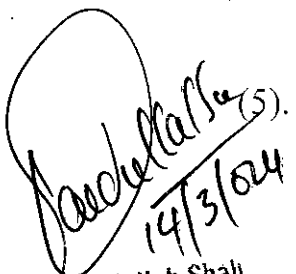

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- IV. Whether the plaintiff was caught by the defendants while using unfair means during the examination and the decision of jury and committee regarding disqualification of the plaintiff is justified?
- V. Whether the plaintiff is entitled to the decree as prayed for?
- VI. Relief.

(3). The parties were given opportunities to adduce their evidence. Accordingly, the respondent/plaintiff produced Saeed Anwar (attorney of the plaintiff), Syed Iqbal (Record Keeper of Naib Tehsildar, Orakzai) and Navid Ullah (teacher of the plaintiff at FCA) as PW-1 to PW-3 respectively in support of his contention. On the other hand, the appellants/defendants produced Zeeshan Shah (Record Keeper BISE Kohat) and Syed Sajjad Hussain Sherazi (ADEO/the then Superintendent of examination at GHS Mishti Bazar) as DW-1 and DW-2 respectively in support of their contention.

(4). The learned trial court, after having heard the arguments, decreed the suit. Appellants/defendants, considering themselves aggrieved of the impugned judgment/decreed, filed the instant appeal.

Ex-parte arguments heard and record gone through.


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(6). Perusal of the record reveals that the respondent/plaintiff, subsequent to his commendable performance in the 9th examination, sought to retake the examination with the aim of enhancing his marks. The appellants/defendants assigned him the examination centre but the defendant no. 3, without any justifiable reason, changed the examination centre from GHS Mishti Bazar to Governor Model School. This action by the appellants/defendants prompted a reaction from the respondent/plaintiff and other affected students, leading to a protest against them. Upon being informed, Tehsildar Central Mishti Mela intervened and reported the incidents to the Deputy Commissioner, Orakzai.

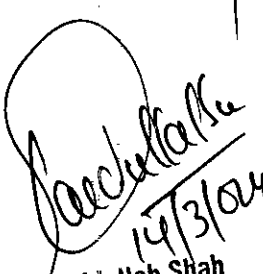
In order to prove this stance, the respondent/plaintiff has produced Syed Iqbal as PW-2 who exhibited two information reports issued by Assistant Commissioner Lower Orakzai bearing No. 1617/AC/L Dated 07.11.2022 and 1635/AC/L Dated 09.11.2022 as Ex. PW 2/2 and Ex. PW 2/3 respectively. The contents of both of these documents have not been objected to by the appellants/defendants thereby admitting the factum of the illegal shifting of examination centre coupled with the plea of the transfer of defendant no. 3 and the allegation that the students of FCA have been treated unfairly as compared to other students. The statement of PW-2 could not have been shattered regarding any of the


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fact narrated in the report. Besides that, no documentary evidence has been adduced by the appellants/defendants to rebut the above-mentioned reports.

It was pleaded by the appellants/defendants in their written statement that the respondent/plaintiff was engaged in cheating during the examination. However, instead of producing evidence to prove this fact, the appellants/defendants diverted to another version during testimonies of DWs that someone impersonating the respondent/plaintiff had taken the exam. However, the entire record is silent regarding the person despite that he was caught red-handed by the defendant no. 3 as per his court statement as DW-2 and the statement of DW-1, even the name of the alleged person is not mentioned anywhere in the available record. Neither was the said person handed over to the police nor was any complaint lodged against him. Moreover, among all the protestors, implicating the respondent/plaintiff suggests malicious intent on the part of the appellants/defendants.

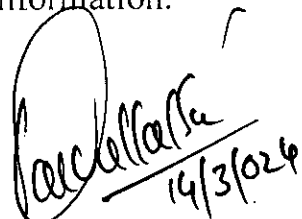
- (7). In these circumstances, it is held that the evidence produced by the appellants/defendants is not in line with the pleas in the written statement; therefore, the learned trial court has rightly decreed the suit of the respondent/plaintiff. The impugned judgement/decree of the learned trial court is unexceptional and not open to any interference by this court.


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Accordingly, the appeal in hand resultantly stands dismissed being meritless with no order as to cost.

Judgment announced. File of this court be consigned to Record Room while record be returned. Copy of this judgement be sent to learned trial court for information.

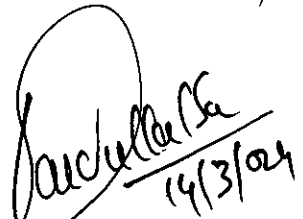
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CERTIFICATE

Certified that this judgment consists of six (06) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 14.03.2024


(SYED OBAIDULLAH SHAH)
District Judge, Orakzai
at Baber Mela

