
(1984) 07 OHC CK 0034
In the Orissa High Court
Case No : O.J.C. Case No. 201 of 1984

Gatikrishna Mohanty and Another

APPELLANT

Vs

Board of Secondary Education and Another

RESPONDENT

Date of Decision : 23-07-1984

Acts Referred:

Board of Secondary Education Regulations — Regulation 34A, 34B, 6

Citation : (1984) 2 OLR 1013

Hon'ble Judges : P.C. Misra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : J. Das, for the Appellant; B.L.N. Swamy, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—Petitioner No. 1 was a regular student in the Government High School in Unit No. 1, Bhubaneswar, and was prosecuting his study upto Class-X. He was duly sent up by the Headmaster for appearing at the Supplementary High School Certificate Examination for the year 1983, in accordance with Chapter-X of the Regulations of the Board of Secondary Education, Orissa, but could not fill up the forms and, therefore, could not appear at the Supplementary Examination in the year 1983 for some unforeseen reasons. Thereafter he approached the Headmaster of the School to permit him to appear at the annual examination of 1984, but the Headmaster (opposite party No. 2) did not permit the petitioner to fill up the forms to appear at the annual examination of 1984. Petitioner was informed that under instructions of the Board of Secondary Education, Orissa, he was not entitled to appear as a regular candidate. Petitioner No. 1 thereafter made an application on 11th of January, 1984, to the Secretary, Board of Secondary Education, Orissa, which was recommended by the Headmaster concerned. Petitioner No. 2 who is father of petitioner No. 1 with the said application approached the President of the Board, but he also expressed his incapability to help in the matter in any manner. Therefore, petitioners filed the present writ petition with the prayer that a writ of mandamus be issued directing

the opposite parties to allow petitioner No. 1 to fill up the forms and appear at the annual High School Certificate Examination of 1984.

2. As an interim relief, petitioner No. 1 prayed that he might be permitted to fill up the forms and appear at the said annual examination. When the matter was listed for admission, notice of admission was issued on 3.2.1984, Opposite party No.1 entered appearance and the matter was listed on 8.3.1984. After hearing parties, this Court issued notice of admission and hearing and as an interim measure also directed that petitioner No. 1 be permitted to fill up the forms to appear at the annual examination of 1984 as a private candidate and opposite party No. 2 was directed to receive the application and take necessary steps so that petitioner No. 1 could appear at the examination. Mr. Das, the learned counsel for the petitioners, states that pursuant to this order of the Court, petitioner No. 1 has appeared at the said examination but though the results of the annual High School Certificate Examination of the Board are already out, yet petitioner No. 1's results have not been declared, since there was no direction from this Court to publish the same.

3. At the hearing of this writ petition, Mr. Das, the learned counsel for the petitioners, submits that in accordance with the Board's Regulations, petitioner No. 1 is entitled to appear as a regular candidate in the annual examination of 1984, since he comes within the provisions of Chapter-X, Section-I, Regulation 6 of the Board's Regulations and the opposite parties illegally denied the said right to petitioner No. 1. Mr. B. L. N. Swamy, the learned counsel for the Board, points out to us the amendment of the Regulations which has come into force with effect from 19th of January, 1984, which prohibits any private candidates to be allowed to appear at the High School Certificate Examination in 1984 and onwards and requires that he must come through the Correspondence Course as an external candidate. The amended provision of Regulation 34-B is quoted here in below in extenso:

"Subject to Regulation 34-A, no new enrolment of private candidates under Old Course (Courses of Study 1980) shall be allowed for High School Certificate Examination, 1984 and onwards. All private candidates shall come through Correspondence Course as external candidates with effect from the Annual High School Certificate Examination, 1984."

In this view of the matter, Mr. Swamy contends that since the petitioner No. 1 was not a regular candidate and also did not appear as a private candidate through Correspondence Course, his application was rightly rejected by the Board.

4. Chapter-X of the Regulations deals with conduct of High School Certificate Examination and prescribes the eligibility of candidates to appear at the same. Regulation 6 of Chapter-X, Section-I, enumerates the categories of candidates who can take the High School Certificate Examination Clause (a) deals with "regular candidates" and Clause (b) deals with "ex-regular candidates".

According to Mr. Das, the learned counsel for the petitioners, petitioner No. 1, having satisfactorily prosecuted a regular course of study in Classes IX and X at an institution recognised by the Board and having been duly sent up for the examination by the head of the institution last attended, must be treated as a regular candidate. The contention may not be very correct, inasmuch as, petitioner No. 1 was not sent up for the annual High School Certificate Examination for the year 1984. The term "the examination" in the said clause is of great significance and, therefore, in order that a candidate would be termed as a regular candidate, not only he must have satisfactorily prosecuted a regular course of study in Classes IX and X in an institution recognised by the Board, but also must have been duly sent up for the said examination by the head of the institution. We are not in a position to hold that petitioner No. 1 satisfied this requirement. Clause(b), however, defines "ex-regular candidates". For better appreciation of the care, the said Clause (b) of Regulation 6 u/s I of Chapter X of the Regulations is quoted here in below in extenso:

"Ex-regular candidates, that is, candidates who have prosecuted a regular course of study in one or more recognised High Schools in classes 9 and 10 and who were admitted to an examination of a previous year but (i) could not appear, or (ii) having appeared failed at the examination. (This provision will be applicable in case of candidates appearing in. 1984 and onwards.)"

There is no dispute that petitioner No. 1 had prosecuted regular course of study in the Government High School, Unit No. 1 in classes IX and X and there is also no dispute that he was duly sent up for the Supplementary Examination of the year 1983, but could not appear at the said examination. In our view, his case is squarely covered by the aforesaid provision and he must be treated as an ex-regular candidate and, therefore, in terms of Regulation 6, he was entitled to take the High School Certificate Examination. There is no justification for the authorities of the Board not to permit him to take the annual High School Certificate Examination. There is no doubt that in view of the amended provision of Regulation 34-B, petitioner No. 1 was not entitled to appear as a private candidate, since there was an embargo on all such candidates with effect from the High School Certificate Examination of 1984 and they are require to appear through Correspondence Course as external candidates.

Under orders of this Court, petitioner No. 1 has, however, filled up the forms as a private candidate and has taken the examination as a private candidate in the annual High School Certificate Examination of the year 1984. To our query, Mr. Swamy, appearing for the opposite parties could not give any answer nor could he points out any provision as to why petitioner No. 1 was not to be included in the class of ex-regular candidates as provided for the Chapter-X, Section I, Regulation 6(b). We therefore, held that in the facts and circumstances of the case, petitioner No. 1 must be treated as an ex-regular candidate and, therefore, he was entitled to appear at the annual High School Certificate Examination for the year 1984. Since he has already appeared as a private candidate under the

interim direction of this Court, it must be treated as if he has taken the said examination as an ex-regular candidate. We also direct the opposite parties to declare the results of the examination which the petitioner No. 1 has undertaken within a week from the receipt of the order of this Court.

In the result, the writ petition is allowed, but there would be no order as to costs.

P.C. Misra, J.

5. I agree.