
(2015) 01 OHC CK 0004
In the Orissa High Court
Case No : W.P.(C) No. 6634 of 2003

Narasingha Pattnaik

APPELLANT

Vs

Board of Secondary Education Odisha

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Citation : (2015) 119 CutLT 1099

Hon'ble Judges : Dr. B.R. Sarangi, J.

Bench : Single Bench

Advocate : Mr. C.A. Rao, Advocate, for the Petitioner; Mr. A.K. Tandi and Mr. A.K. Mohanty, Advocates, for the Opposite Parties

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J. - The Petitioner, who is working as a Physical Education Teacher in Bayaguda High School, Bayaguda in the district of Rayagada has filed this application for publication of his result of C.P.Ed. Examination, 1999 conducted by the Board of Secondary Education, Odisha, Cuttack.

2. The factual matrix of the case in hand is that the Petitioner was a student of Maa Samalei College of Physical Education & Yoga, Jayantpur during the year 1997-1998 & completed the P.E.T. course in the year 1997. After completion of course, no examination was conducted as the institution was not recognised by the competent authority. Therefore, the Petitioner was relieved from the institution on 30.04.1998 & was informed that theory & practical examination would be held later on. The Govt. of Orissa granted permission on 3.7.1998 to Maa Samalei College of Physical Education & Yoga, Jayantpur for its students to appear in the C.P.Ed. Examination 1998 as a special case through Govt. College of Physical Education, Orissa, Bhubaneswar subject to condition that management of the college would close down the college immediately & transfer their properties to Government. Accordingly, the Petitioner was relieved from the college on 31.03.1999 after his practical examination conducted at Govt. College of Physical Education, Bhubaneswar & he was directed to report to the Principal,

Govt. College of Physical Education, Bhubaneswar on 30.06.1999. On being relieved, the Petitioner reported to the Principal, Govt. College of Physical Education on 30.06.1999 to appear at the theory examination scheduled to be held from 2.7.1999 to 6.7.1999. He was issued with an admit card having roll No. 01BBP188, & the theory examination was held at University High School, Vanivihar, Bhubaneswar. It is stated that the result of such examination has not been published till date, hence this Writ Petition.

3. Mr. C.A. Rao, Learned Senior Counsel appearing for the Petitioner urged with vehemence that once the examinee, namely, the Petitioner herein was issued with an admit card to appear in the examination & he appeared at the examination, the authority is bound to publish the result thereof. Non-publication of result by the authority is contrary to the provisions of law. To substantiate his contention he relies upon the Judgments in *Sanatan Gauda v. Berhampur University & others*, AIR 1990 SC 1075, *Prakash Chandra Kuanr v. Secretary, Board of Secondary Education, Orissa & others*, 1996 (II) OLR 268 & *Amarjeet Jena v. Council of Higher Secondary Education, Orissa & others*, AIR 1999 Orissa 129.

4. Mr. A.K. Tandi, Learned Counsel who had entered appearance on behalf of Opp. Party No.1 & also filed counter affidavit, at the time of second call, was not present. Similarly, Mr. A.K. Mohanty, Learned Counsel though entered appearance on behalf of Opp. Party No.3 but neither he filed counter affidavit nor was present in Court when the matter was called second time. Since the main contestant is Opp. Party No.1 & counter affidavit has already been filed by the said Opp. Party, this Court taking into consideration the counter filed by Opp. Party No.1 proceeded with hearing of the matter.

5. From the counter affidavit filed by Opp. Party No.1, it appears that it is admitted fact that the Petitioner had appeared in the C.P.Ed. Examination, 1999 having Roll No.01BBP188. During scrutiny of the application forms of the candidates of the Maa Samalei College of Physical Education & Yoga, Jayantpur, it was found that the documents submitted with the application form was false, tampered with & the candidates were over aged. Accordingly, the said fact was intimated to the Principal, Govt. College of Physical Education, Orissa vide letter No. 4251 dated 3.9.1999 with a request for removal of the defects. When no reply was received from the Principal, Govt. College of Physical Education, Bhubaneswar, Orissa reminder was issued. On receipt of the same, the Principal vide letter dated 21.10.2009 intimated the same to the Secretary, Maa Samalei College of Physical Education & Yoga for compliance of the defects pointed out by the competent authority. Therefore, due to non-removal of the defect, result of the Petitioner was kept withheld & subsequently result was declared vide notification No. 622 dated 7.7.2000 under Annexure-B/2, wherein the result of the Petitioner was cancelled.

6. Considering the aforementioned facts pleaded & after hearing Learned Counsel for the Petitioner, the admitted fact is that the Petitioner had taken admission to

a private un-recognised educational institution & pursuant to a special permission granted by the Government, the students of the said private institution were directed to appear in the examination through Govt. College of Physical Education, Bhubaneswar. In compliance to the same, the Petitioner having Roll No.01BBP188 was permitted to appear in the examination by complying due formalities. Though the Petitioner appeared in the examination in the scheduled time but his result has not been published & kept withheld initially on the plea of genuineness of his candidature which has been intimated vide letter No.2120 dated 24.6.2000, wherein it has been intimated by the Dy. Secretary of Bhubaneswar Zone that the Petitioner was over aged & his date of birth was tampered from 5.1.1972 to 5.1.1973.

7. In *Sanatan Gauda* (supra) the Apex Court held that the candidate having been admitted to law course & permitted by the University to appear in the examination conducted by the University, refusal to declare results of examination by University on the ground of ineligibility to be admitted to law course is hit by principle of estoppel.

8. In *Prakash Chandra Kuanr* (supra), this Court referred to *Sanatan Gauda* case (supra), wherein the Petitioner after completion of 10th class applied for appearing as regular candidate at the High School Certificate Examination, which was allowed by the Board of Secondary Education & consequentially admit card was issued in his favour & the Petitioner appeared in the examination but result was not published. This Court held that the action of the Board is not sustainable as it has been done one-sided without giving the Petitioner opportunity to be heard & therefore the results of the examination should be declared.

9. In *Amarjeet Jena* case (supra), the result of the Petitioner was withheld on the ground that Regulation-107 has not been complied with. In that case, this Court held that student can be admitted only if he or she has completed a regular course of study in one or more affiliated institutions recognised for the purpose of Council's Examination for not less than two academic years after passing the High School Certificate Examination of the Board of Secondary Education, Orissa or some other equivalent examination recognised by the Council & thereafter the result was published.

10. On analysis of the Judgments referred to above, it appears that once a student has been allowed to appear in the examination, the college or council is estopped from refusing to publish the result. But the ratio of the aforesaid Judgments is not applicable to the present context. The case in hand is distinguishable from the above citations to the extent that initially the result of the Petitioner was kept withheld but the same was subsequently cancelled by notification No. 622 dated 7.7.2000 vide Annexure-B/2 in view of the fact that genuineness of documents of the Petitioner along with others were doubted & the Petitioner was over aged & his date of birth has been tampered with from 5.1.1972 to 5.1.1973. Therefore, the cancellation of the result of the Petitioner having been published by Annexure-B/2, it cannot be construed that, the result

of the Petitioner has not been published.

11. In view of the aforesaid facts & circumstances, this Court is of the considered opinion that result of the Petitioner having been declared & the examination committee having resolved to cancel the result of the Petitioner, the plea advanced by Learned Counsel for the Petitioner to declare the result is absolutely misconceived one. Therefore, the relief sought in the Writ Petition having already been granted, this Court finds no merit in the Writ Petition.

12. Accordingly, the Writ Petition is dismissed. No order to costs.