

(2008) 11 OHC CK 0074
In the Orissa High Court

Narmadaprava Sahu

APPELLANT

Vs

The Controller of Examination, Council of Higher Secondary
Education and Another

RESPONDENT

Date of Decision : 03-11-2008

Acts Referred:

Citation : (2009) 1 OLR 72

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—Heard learned Counsel for the petitioners and the learned Counsel for the Council of Higher Secondary Education, Orissa.

2. The aforesaid writ petitions have been filed by some of the students of P.S.H.S. School, Danra, inter alia, making a prayer for issuance of direction to declare their results in the +2 Science Annual Examination, 2008 conducted by the Council of Higher Secondary, Orissa, (for short, "the C.H.S.E.") after quashing the decision of the said Council which was notified in notification dated 24.6.2008 cancelling the examination in Chemistry paper of all the candidates except three.

3. The petitioner's case is that after successfully prosecuting in +2 Science stream in the aforesaid P.S.H.S. School, Danra, they were issued with Admit Cards to appear in the +2 Science Annual Examination, 2008 conducted by the C.H.S.E.. Though they fared well and were hopeful of coming out successful with flying colours, but to their utter surprise, they found that the results of the students appearing from the said school in the Science stream were withheld on the ground that their answer papers in Chemistry was being re-examined by a Review Committee, after which, the results will be declared. Ultimately, their results were declared on 25.7.2008 where the petitioners were shown to have failed, The mark-sheets provided to the petitioners reflecting that they have been

awarded "O" mark in Chemistry Theory Paper, even though they secured good marks in the aggregate. The petitioners as well as all other students appearing in the Science stream were declared failed except three candidates. The petitioners have alleged that there was no report of any untoward incident in or around the examination hall/centre on the relevant day when the examination was being conducted in Chemistry Theory Paper. The invigilators/Centre Superintendent and the Flying Squad which visited the centre have never reported about any mal-practice being adopted by any of the candidates. No incriminating materials whatsoever were found to be in possession of any of the students as well as the other students appearing in the said examination. The petitioners have emphasized that none of them committed any mal-practice or adopted any unfair means while appearing in the said examination. In some of the writ petitions, the notification dated 24.6.2008 has been annexed from which it is revealed that in case of the school of the petitioners, the Chemistry Paper of all the students was cancelled, except three students. Similarly, the Chemistry and Mathematics papers of Kantabanji Vocational College and the paper in UMS of all the candidates, except one, with respect to the Regional College, Hindol in Commerce Stream, were also cancelled.

4. A counter affidavit has been filed by the C.H.S.E. in W.P.(C) No. 12653 of 2008 and the learned Counsel for the C.H.S.E. has adopted the said counter affidavit in respect of other writ petitions. The opp. party No. 1 has stated in the counter affidavit that at the time of evaluation of the answer scripts in the Chemistry Paper of the petitioners and other students of the school, the Assistant Examiner observed that in almost all the answer scripts, the answer to the objective questions carrying out 40 marks have been jotted down in one of the pages of the answer scripts. Some of the candidates have mentioned the same to be rough work and all the answers are almost identical including the mistake. On such report, a suspicion arose that the answer to the objective questions might have been dictated to the candidates soon-after the examination started before the arrival of the Squad/Observers. The said report of the Assistant Examiner was sent to the Zone Supervisor, SVM Autonomous College, Jagatsinghpur, who by letter dated 18.5.2008 intimated the said fact to the opp. party No. 1. After getting such intimation, by resolutions dated 13.5.2008 and 14.5.2008, the Examination Committee authorized the Chairman of the Council of Higher Secondary Education to take a decision regarding cancellation/withholding the cases of different reported examination centres. Accordingly, results of 47 candidates including the petitioners from the P.S.H.S. School were withheld pending further enquiry. Thereafter, the matter was enquired into and the answer scripts of the total number of 50 candidates from the said school were again scrutinized by the Subject Expert appointed by the Examination Committee, who after varying each answer scripts observed that in all answer scripts, except such answer scripts in respect of three candidates, are written at different pages and marked as "rough work" or "cancelled" by putting a cross over the writing and some have damaged the writing by scribbling over the same. With the aforesaid,

the expert concluded that there is clear indication that the said candidates took help from outside for answering the short questions. On consideration of the said report, the Examination Committee by its resolution dated 24.6.2008 decided to cancel the result of +2 Science Regular candidates in Chemistry except three candidates, out of whom, only two candidates were able to pass in Chemistry. Therefore, out of 50 examinees, only 2 were declared passed, one was declared failed and other 47 examinees were awarded "0" mark in Chemistry.

5. Learned Counsel for the C.H.S.E. vehemently argued that the Council is not only empowered to cancel the results when incriminating materials found or adverse report is made by the invigilators/observers/ squad of the C.H.S.E. in course of conducting the examination, but also, to take a decision for cancellation of its results, if mal-practice is detected during the course of valuation of the answer scripts in the valuation centre. Clause 19 (xii) of the Zonal Valuation Manual, 2008 has been quoted in the counter affidavit in support of the above contention. Learned Counsel further submitted that in the instant case, from the report of the valuers, it is clear that the petitioners adopted unfair means in course of conducting the examination.

6. Mr. Das, learned Counsel for the petitioner in W.P.(C) No. 12653 of 2008 places reliance on the decision of this Court dated 19.8.2008 rendered in W.P.(C) No. 10106 of 2008 : 2008 (2) OLR 622 (M. Vinita and Ors. v. Council of Higher Secondary Education, Orissa and Ors.) in support of his contention that the entire decision of the Examination Committee has been taken on surmises and conjectures, there being no material in support of such conclusion of the Examination Committee that the candidates appearing in the Chemistry Paper adopted unfair means. In the aforesaid decision of this Court in the case of M. Vinita and others (supra), this Court was considering the case of the students of Kantabanji Vocational College in respect of whom both Mathematics and Chemistry papers were cancelled by the self-same notification impugned in the present writ petition. Though the facts of the said case are some what distinguishable from the facts of the present cases, as in the said case, the decision of the Examination Committee was based on the abnormally high result of the. candidates of the said institution unlike the present cases, where it was found that the candidates have written the answers to the objective questions in some part of the answer scripts either stating that the same is a rough work or striking out the same subsequently, but with regard to the fact that the decision of the Examination Committee is not based on any reasons assigned therein substantiated by any incriminating materials found during the course of examination, are common to both the cases. A similar view was also taken by this Court in the order dated 19.8.2008. This Court also finds that in the absence of any report made by the Flying Squad/Invigilators/Superintendent of the Examination Centre that the candidates adopted unfair means or there was mass mal-practice while appearing in the Chemistry paper where "0" mark has been awarded to them, just because, the answers to the objective questions were found to have been noted in some part of the answer scripts clumsily, the same

cannot, by any stretch of imagination, be a basis for the Examination Committee to raise a suspicion on the candidates and to rely upon such suspicion and conclude that the candidates have adopted unfair means during the course of examination. The further conclusion in the report of the committee that the answers to the objective questions must have been dictated prior to the commencement of the examination is also far fetched.

7. This Court is, therefore, of the view that basing on such suspicion pointing, in the absence of any concrete materials, towards unfair means being adopted by the candidates, the Examination Committee could not have awarded "0" mark in the Chemistry paper of the petitioners as well as the other candidates of the said institution, more so, when no plausible reason has been assigned by the Examination Committee for doing so.

8. In view of the above, since this Court finds that the action of the Examination Committee in awarding "0" mark in the Chemistry paper to the petitioners and other similar candidates appearing from P.S.H.S. School is unsustainable and the notification dated 24.6.2008 declaring the Chemistry paper to be cancelled in respect of the petitioners and others totalling to 47 candidates is quashed. The C.H.S.E. is, therefore, directed to declare the result of the petitioners by awarding the marks allotted to them during valuation of their Chemistry Paper by the examiners and in the event, no such valuation has been made, to evaluate the Chemistry paper of the said 47 candidates including the petitioners and declare the results in +2 Science Annual Examination, 2008 within a period of forty-five days from the date of production of a certified copy of this order by any of the petitioners before the opp.party No. 1.

9. The writ petitions are accordingly allowed.

Urgent certified copy of this order be granted as per rules.