
(2004) 12 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 7579 of 1999

Nibedita Sahu

APPELLANT

Vs

Sambalpur University and Others

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Citation : (2005) 99 CLT 313 : (2005) 1 OLR 79

Hon'ble Judges : P.K. Mohanty, J; J.P. Mishra, J

Bench : Division Bench

Advocate : B. Routray, S.S. Kanungo, A.K. Baral, P.K. Dash and B.N. Senapati, for the Appellant; Bhawani Prasad Ray, for Opp. Parties 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—The petitioner had appeared at the Part-!! M.A. (Oriya) Examination, 1998 conducted by the Sambalpur University as a student of Panchayat College, Bargarh. Part-II consisted of four papers, i.e., Papers V, VI, VII and VIII out of which Papers VII and VIII were special papers in which a candidate is required to opt for any of the groups and the petitioner opted for Group-E in the aforesaid special papers. Group-E consisted of Oriya "Sahityara Dharmadhara" and "Oriya Baishnab Sahitya." Accordingly, the petitioner filled up her form with Group-E in special papers VII and VIM. While appearing at the examination in the said papers, the found to her utter surprise that the question papers did not contain any question from Group-E subjects opted by her. Finding no other alternative, she attempted to answer questions from other Groups and answered the same to the best of her. ability and made a representation to the Controller of Examinations intimating the fact that the question papers did not contain any question from Group-E and, therefore, she had answered the questions from other groups. The said representation was duly forwarded by the Principal of the College to the University, copy of which is Annexure-4.

2. Result of the M.A. Examination in Oriya was published but the petitioner's

result was kept withheld. She made several representations to the Controller of Examinations and ultimately her result was published on 8.5.1999 wherein she was declared fail. The mark-sheet issued to her reflected that she remained absent in Papers-VII and VIM and on that basis she was declared fail. Copy of the mark-sheet has been annexed as Annexure-7. In this Writ Application the petitioner has prayed for quashing of the aforesaid mark-sheet and directing the University to publish her result on the basis of marks secured by her in Papers-VII and VIII.

3. Learned Counsel for the petitioner submits that the petitioner having applied for permission to appear at the M.A. Part-II Examination with the special papers in Group-E the University was required to set question from the subjects in Group-E but no question having been set from that group, the petitioner could not have taken the said examination but finding no other alternative, she having answered questions from other groups, the University ought to have declared her result on the basis of her performance in those papers treating the same to be her special papers. But the University could not have marked her absent when she in fact took the examination in Papers-VII and VIII by answering the questions from other groups because no question was set by the University from the group opted by her.

4. The Sambalpur University through its Assistant Controller of Examinations has filed a counter affidavit denying the claim of the petitioner. In Paras 4 and 5 of the counter affidavit details of facts are indicated which are extracted hereunder:

"4. The petitioner Nibedita Sahu, a candidate for M.A. Part-II, 98 examination in Oriya bearing Roll No. 97N600 has filed up the form to appear. Part-II, 98 examination in M.A. Oriya from Panchayat College, Bargarh as a regular candidate as follows :

P. V. : Bhasatatva"O" Bhasara Bikasadhara. P. VII : Oriya Sahityara Itihasa. P. VIII : Oriya Sahityara Dharmadhara) P. VIII : Oriya Baisnaba Sahitya) Special Paper.

The final application form has been duly forwarded by the Principal, Panchayat College, Bargarh. The candidate has been allowed to appear the Part-II, 98 examination. The examination programme notification has been vide notification No. 07362/EG-III, dt. 5.6.1998. It may be pointed out that special papers as mentioned above was not reflected in the examination programme inadvertently. But in the programme notification for the Part-II 98 examination it has clearly been specified that "omission and clashes if any should be reported to the undersigned immediately". The examination of the said Paper No. VII for M.A. Part-II, examination 98 commenced on 6.8.1998 whereas a time period of 61 days between the date of issue of programme and the date of commencement of examination during which the omission could have been rectified had the Principal of the college centre i.e. the Principal, Panchayat College, Bargarh reported the omission of the papers in the programme of the said examination.

But no report has been received from the Principal regarding the omission of the special papers in Oriya.

That the candidate though opted for Oriya Sahitya Dharmadhara and Oriya Baisnaba Sahitya as special paper in M.A. Oriya Part-II, 98 examination, the candidate appeared in other two papers in which the candidate did not study and did not offer in the final form sent by the college to the University. Therefore her examination on Paper-VII and VIM are not acceptable."

5. In view of the clear and specific stand of the University that the petitioner opted for Group-E as special papers VII and VIII and was permitted to appear in the said papers and the University having admitted that it inadvertently omitted to include the said group in the examination programme as a result of which no question was set from the Group opted by the petitioner, it is unfortunate that the University could take a plea that the Principal of the College ought to have reported the omission in the examination programme and he having not done so, the defect of the University could not be rectified.

6. Admittedly no question was set from the group opted by the petitioner. Finding no question from the Group-E opted by her, the petitioner took the examination by answering the questions from other group available in the question paper according to her ability. It appears that even though the petitioner immediately after the examination had made representation to the Controller of Examinations which was duly forwarded by the Principal, intimating that no questions were set from the group opted by her and she answered the available questions, the University did not take any steps. The University could have taken steps either to hold a fresh examination for the petitioner by setting questions from the group opted by her or declared her result according to her performance in those papers but could not have marked her absent in those papers. When no question was set from the Group opted by the petitioner, she could not be said to have not answered from that group. In our considered opinion, the University has acted in a very irresponsible manner in dealing with the case of the petitioner. Instead of putting the blame on itself for the mistake committed by it, in not including the special paper opted by the petitioner in the programme for examination and rectifying the mistake by setting questions from the said group and conducting a fresh examination, has put the blame on the Principal of the College stating that the Principal having not pointed out the defect or mistake committed by the University, it could not rectify the same. If any body is to be blamed, it is the University and University alone and the petitioner cannot be made to suffer for the fault of the University or even the Principal. The plea taken by the University that the petitioner did not appear at Papers-VII and VMI in the group opted by her and as such she was marked absent is unconsonable. The University rather should have been fair in accepting the answers given by the petitioner from other groups for which she did not opt but attempted under compulsion. We have no words to express our agony and concern as regards the manner in which the University acted in the present case by putting the blame on the Principal of the

College, for its own negligence and laches.

7. The petitioner having appeared at the examination in all the papers including Papers-VII and VIII though from other group of subjects available in the question paper, such answer ought to have been treated by the University as answers in the special paper opted by her since the petitioner cannot be allowed to suffer for the negligence and laches of the University in the conduct of the examination.

8. We have perused the attested copy of the mark foil in Papers-VII and VIII and other papers. It appears that the petitioner has secured good marks in those two papers even though she had not opted for the group she attended. In any event, the petitioner having appeared at Papers-VII and VIII, she could not have been marked absent. She has given in writing to the University that since there was no question in the question paper from Group-E which she had opted, she was compelled to answer the questions from other groups. In the meantime, more than six years has passed and she has been made to suffer for the fault of the University.

9. In that view of the matter, we direct the University to treat the petitioner to be an examinee of the Special Paper which she answered and publish her result taking the mark secured by her in those Papers-VII and VIII within a week of receipt of our order. We find that the petitioner has suffered mental stress and agony during the last six years solely because of the negligence and laches of the University and as such, she should in all fairness be compensated by the University. While, therefore, allowing the Writ Petition in the aforesaid terms, we impose an exemplary cost of Rs. 15,000/- (fifteen thousand) on the University to be paid to the petitioner.

J.P. Mishra, J.

10. I. agree.