
(2010) 12 OHC CK 0023
In the Orissa High Court
Case No : Writ Petition (C) No. 11770 of 2009

Padmini Lenka

APPELLANT

Vs

Central Institute of Hindi and Others

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Citation : (2011) 111 CLT 722 : (2011) 1 OLR 212 Supp

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

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner has sought for issuance of mandamus nullifying the punishment imposed on her by declaring her failed in Parangata Course examination held for the academic session 2008-09.

The Petitioner's case is that she having the eligible qualification, i.e., B.A. in Hindi applied to undergo training in Parangata Course, which is equivalent to B. Ed. under the Central Institute of Hindi, known as Kendriya Hindi Sansthan, at Agra, having a centre at Bhubaneswar. The Petitioner being selected took her admission at Agra & her centre was fixed at Bhubaneswar in Unit-IX Boys' High School to appear in the examination held in the year 2009 as a regular student. The Parangata Course is of one year duration. The examination commenced from 27.4.2009 with the following schedule:

27.4.2009

Paper-I

10.30- 1.30

29.4.2009

Paper-II

10.30 - 1.30

1.5.2009

Paper-III

10.30-1.30

4.5.2009

Paper-IV

10.30 - 1.30

11.5.2009

Paper-VII

10.30-1.30

13.5.2009

Paper-V

10.30 - 1.30

14.5.2009

Paper-VI

10.30-1.30

2. On 11.5.2009, when the Petitioner was appearing in Paper-VII, i.e. Hindi Literature examination, after sitting in the examination hall, the invigilator gave her the answer books & question paper. At 11.45 A.M. another lecturer, namely, Pallava Vishnu, though, not allotted with invigilation duty in the examination hall in which the Petitioner was appearing entered into the said hall & verified the Petitioner's poly bag, which was hanging on the chair of the Petitioner. It contained a water bottle, a pen box & a handkerchief. After such verification, he suddenly took away the answer scripts from the Petitioner on the allegation of mal-practice. According to the Petitioner, no incriminating material was recovered from her, except the water bottle & pen box. The Petitioner has stated that by that time, she already answered about five numbers of questions. Even, as per the examination Rule 5, the Centre Superintendent issued a second new answer book to the Petitioner & the Petitioner having no alternative, again started to answer all eight questions at 11.50 A.M. It is alleged that the second answer script of the Petitioner has not been evaluated & her result was declared as failed in Parangata Course which was published on 29.6.2009. The mark-sheet was issued to the Petitioner on 28.7.2009 by the Regional Centre at Bhubaneswar from which, it would be evident that no mark has been allotted for Paper - VII out of full mark of 80. But, nevertheless, the Petitioner otherwise has secured 64.4% marks as her aggregate mark was 449 out of 700 & 196 out of 300 (practical) & had the marks been allotted to her in Paper-VII, she would have secured first division.

3. Mr. S.D. Das, Learned Assistant Solicitor General appearing for all the Opp. Parties has filed a counter affidavit on their behalf sworn to by the Regional Director of Bhubaneswar.

4. Mr. Samonath Mishra, Learned Counsel for the Petitioner vehemently urged that no incriminating material having been seized from the Petitioner, she could not have been held to have indulged in mal-practice while appearing in Paper-VII. He further submitted that the direction issued to the examinees by the institute as at Annexure-3 shows that no examinees should keep with them any paper, book etc. inside the examination hall & if anyone is found to be possessing any paper etc., then the answer script would be seized from such examinees & such examinees will be provided with new answer scripts, which goes to show that the answers given in the new answer script, even in case when some incriminating materials are found from an examinee, is required to be evaluated & such marks secured by the examinee in the new answer script should be awarded to her/him. He, therefore, submitted that in the instant case, it was incumbent upon the Opp. Parties 1 to 4 to value the second answer script which was provided to the Petitioner even conceding that the water bottle & the pen box are incriminating materials.

5. Mr. S.D. Das, Learned Assistant Solicitor General, on the contrary, drawing the notice of this Court to the prospectus produced by him, submitted that under Chapter v. of the said prospectus prescribing the Rules of examination, it has been provided in Clause 15 that if any examinee is found to be copying or found to be possessing any material or copying, then the whole examination for that examinee may be cancelled by the committee constituted by the Director.

6. Pursuant to an interim order passed by this Court, the Learned Assistant Solicitor General has produced the pen box which was found in possession of the Petitioner as well as the second answer script.

7. Though the Petitioner has stated in the rejoinder affidavit that the pen box produced before this Court is not the pen box seized from her, but as the same is a disputed question of fact, this Court declines to enter into the same. It is also asserted in the rejoinder affidavit that the Regional Director called upon the Petitioner for an interview & assured her to evaluate the second answer script & declare her result. Such assertion has been denied in the further affidavit filed by the Opp. Parties. The assertion of the Opp. Parties that answer to question No. VIII-B & VIII-C was available in the pencil box & the same has been adopted from the pencil box in the answer script of the Petitioner has been denied by the Petitioner in her affidavit dated 19.1.2010 on the ground that in Annexure- B/1 to the counter affidavit, Sri Pallava Vishnu, who recovered the alleged pen box from the Petitioner has himself endorsed that the said pen box was taken from the possession of the Petitioner when she was giving answer to question No. 3 & there is no endorsement that by that time she has already answered question Nos. VIII-B & VIII-C.

8. The first answer script, which was supplied to the Petitioner, has not been produced before this Court by the Opp. Parties to show that any writing on the alleged recovered pen box relates to any of the questions set in the question paper & as alleged, answers to question Nos. VIII-B & VIII-C were copied from it. It further appears that as per the prospectus, the Director has not constituted any committee nor any decision of such committee has been produced before this Court.

9. When enquired, as to why, if any incriminating material is recovered from an examinee, such examinee is provided with a second answer script, it is submitted that as stated in paragraph-II of the counter affidavit, in order to maintain the cool & peaceful atmosphere in the examination centre, as per the prevalent procedure in such examination, an examinee is again provided with another answer sheet only to see that there is no commotion in the examination centre & supply of such a second answer sheet does not entitle the Petitioner to claim any right.

10. However, this Court is not inclined to accept such plea, as Rule 5 of the instruction given to the examinees shows that the second answer script will be provided to a person found in possession of any paper, books etc. Further, it is clear that in the instant case, no committee has been constituted as per Clause 15 of the Prospectus by the Director & no decision has been taken by any such committee not to award any marks in Paper VII to the Petitioner. Ordinarily, in an examination, any incriminating material, if recovered from an examinee, such examinee is immediately de barred from appearing in the said examination & in no examination, a second answer script is allowed to such an examinee. Therefore, this Court is of the view that providing a second answer script is to give an opportunity to the examinee to write the answers again after being dispossessed of any material recovered from her/him on allegation of being an incriminating material. The second answer script provided to the Petitioner which has been produced before this Court as per the interim direction shows that the Petitioner has been awarded 54 marks in the said paper. This Court, therefore, in the circumstances of the case, finds that the action of the Opp. Parties in awarding no marks to the Petitioner in Paper-VII cannot be sustained. This Court, therefore, is inclined to issue a rule directing declaration of the result of the Petitioner in Parangata Course examination, 2009 by including her marks as awarded in the second answer script provided to her in Paper-VII & for supplying a fresh mark C sheet to her. As it is found that the Petitioner has secured 54 marks in the second answer scripts provided to her in Paper VII, the Opp. Parties are directed to award 54 marks in Paper-VII to the Petitioner & accordingly, increase the aggregate marks in theory & publish the result of the Petitioner as well as supply her the fresh corrected mark-sheet within a period of two weeks from the date of production of a certified copy of this judgment before the Opp. Party No. 3 Regional Director.

11. The Writ Petition is accordingly allowed. No costs.

The second answer script along with the pen box produced before this Court which was kept in sealed cover be returned to the Learned Assistant Solicitor General.