
(2015) 09 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 2408 of 1998

Puspanjali Mishra

APPELLANT

Vs

Vice-Chancellor, Utkal University and Others

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Orissa Universities Act, 1989 — Section 24

Citation : (2015) 2 ILR Ori 982

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

Bench : Single Bench

Advocate : Manoj Mishra, Senior Advocate, for the Appellant; Rajib Das and T.N. Pattnaik, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J—The petitioner has filed this application challenging the letter dated 24.1.1998 in Annexure-8 issued by the Controller of Examinations of Utkal University by which her result of B.Ed.(Private) Examination, 1996 has been cancelled and she has been called upon to surrender the original provisional certificate and mark-sheet of the said examination for cancellation.

2. The factual matrix of the case, in hand, is that the petitioner having fulfilled all the eligibility criteria was allowed to appear at the B.Ed.(Private) Examination, 1996 through the College of Teacher Education, Angul with Roll No. 492D205 and registration No. 14577/80, which commenced from November, 1996. The result of the said examination was published on 6.7.1997 wherein the petitioner was declared pass in 2nd division securing 507 marks out of total 950 marks. Accordingly, she has been issued with mark-sheet and provisional certificate for B.Ed.(Private) Examination, 1996 in the month of November, 1996. On 10.12.1997 opposite party No. 2 issued a show cause notice stating that on 29.11.1996 the petitioner while appearing Paper-I has violated Rule 4 of the Rules for the guidance of the candidates as she was in possession of one piece of hand-written material. On receipt of such show cause notice on 27.12.1997 vide

Annexure-4, the petitioner submitted her reply on 2.1.1998 before the date of enquiry as stated in the said show cause notice stating, inter alia, that the petitioner is quite ignorant of the source/origin of the piece of paper in question alleged to have been in her possession at the time of examination. As such, she has not violated any of the disciplines of the examination. But the authorities without considering the same, cancelled her result by passing the impugned order in Annexure-8. It is stated that after passing the examination, the petitioner rendered service on the basis of such certificate and if the result of the said examination is cancelled, she would be rendered jobless. Hence, this application.

3. Mr. Manoj Mishra, learned Senior counsel for the petitioner states that the action of the authorities in cancelling the result of the petitioner of B.Ed. (Private) Examination, 1996 is in gross violation of Clause 240 of the Orissa Universities First Statutes, 1990 as the same has been passed without complying with the principles of natural justice. Once the result has been declared and on that basis the petitioner has already got employment, cancellation thereof is hit by the principles of estoppels and therefore, he seeks for quashing of the same.

4. Pursuant to the notice issued, though Mr. Rajib Das and Mr. T.N. Pattnaik, learned counsel have entered appearance for the opposite parties 1 and 2 and filed preliminary counter, in course of hearing Mr. Rajib Das was not present in Court and Mr. T.N. Pattnaik, learned counsel submitted that he has got no instruction in the matter. Therefore, since this is year-old matter of 1998, this Court thought it proper to proceed with the hearing of the case on the basis of the counter filed by opposite parties 1 and 2.

5. In the counter affidavit, the opposite parties 1 and 2 have stated that on the very first day of examination (Paper-I), the Invigilator seized some hand-written incriminating materials from the petitioner's main answer script at about 11.45 A.M. while the examination was on process, which violates Rule 4 of the Rules for the guidance of the candidates. After the said fact was discovered, the candidate was asked to sign in the official form which was duly endorsed by the Centre Superintendent on 29.11.1996. As per the procedure, the same was sent to the Controller of Examination, Utkal University along with the seized hand-written material and the answer script. It is stated that there is mis-sending of the answer sheet by the Centre Superintendent as instead of dispatching the incriminating materials with answer sheet so far as the candidate bearing Roll No. 492D205 is concerned, the same was sent with the answer sheet of the candidate bearing Roll No. 492D295 in a sealed cover. It is further stated that due to mis-sending of the incriminating materials along with the answer sheet of the candidate bearing Roll No. 492D295 the answer sheet of the petitioner bearing Roll No. 492D205 was valued and result was published wherein she was declared pass, whereas the result of the candidate bearing Roll No. 492D295 was withheld. After enquiry, the said fact was detected and was brought to the notice of the Principal -cum- Centre Superintendent, who was directed to cause an

enquiry and submit a report as to how irregularities have been committed and to take immediate steps to collect the provisional certificate and mark-sheet issued to the petitioner and to send the same to the University for further action. Therefore, subsequently in partial modification of the result published, notification was issued keeping the result of the petitioner withheld and the petitioner was called upon to show cause on 10.12.1997, to which the petitioner submitted her reply on 5.1.1998 stating that she was totally ignorant about the said written paper, rather while she was sitting in the examination, the invigilator came near to her and forced her to sign in a form and threatened her to drive out from the examination hall if she will not sign in the said form. Accordingly, her result was cancelled as per Statute 214(5)(ii) of the Orissa Universities First Statutes, 1990. It is further stated that the impugned action of cancellation of the result of the petitioner having been taken in consonance with the provisions of law in view of the fact that the petitioner was in possession of incriminating materials, which has been duly approved by the Vice-Chancellor on behalf of the Syndicate, no illegalities or irregularities have been committed by the authorities.

6. By way of rejoinder, the petitioner denied the allegations made in the counter and stated that she was neither in possession of the said incriminating material nor was it recovered from her possession. In spite of that the invigilator compelled her to put her signature in a prescribed form and she was further cautioned that if she denied to put her signature, she would not be allowed to sit in the examination. Therefore, under the compelling circumstances, the petitioner put her signature in the said form without verifying the contents thereof. In any case, since the result of the petitioner has already been declared and on that basis, she has already rendered service subsequent to the same, any action taken to rectify the mistake done by the authority, cannot sustain in the eye of law. Accordingly, she seeks for quashing of the same.

7. On the facts pleaded above, it is to be considered whether the authorities are justified in cancelling the result of the petitioner, which has already been published on the basis of which the petitioner has already got job and rendering service.

8. The admitted fact is that the petitioner being a candidate for the B.Ed. (Private) Examination, 1996, appeared the same, whose result has already been published. After the result was published, she having been declared pass, has joined service on the basis of the certificate granted by the authority. While she is discharging her duty, she has been issued a notice to show cause by the University authorities to which the petitioner responded and filed her reply denying the allegations. Without considering the same in proper perspective, the order impugned has been passed cancelling the result. In pursuance of the power conferred by sub-section (3) of Section 24 of the Orissa Universities Act, 1989 (Orissa Act 5 of 1989), the State Government has framed a statute, called the "Orissa Universities First Statutes, 1990". Statute 214 deals with "Unfair means in examination". Sub-clauses (1) to (4) of Statute 214 read as follows :

"214 (1) All instances of unfair means in examinations whether reported by the Center superintendents/invigilators/observers/examiners or otherwise shall be placed before the appropriate board of Conducting Examiners by the Controller of Examinations as soon as practicable but preferable before the results of the relevant examination are passed for publication. The Board of Conducting Examiners shall consider the report and other materials, if any, and make a report of the scope and extent of the unfair means resorted to and specifically whether use has been made of unauthorized or incriminating material referred to in the report or produced before the Board.

(2) in cases the Board is satisfied that there is prima facie evidence of resort to unfair means in the examination, the Controller of Examination shall forthwith issue notices to the candidate concerned precisely specifying the nature of the charge and calling upon the candidate to furnish his written reply to the charges within a period of twenty one clear days. The notice shall also inform the candidate that he shall have the right to a personal hearing on a specified date which shall be after the last date for receipt of the written reply from the candidate.

(3) The written reply of the candidate along with the report of the Board of Conducting Examiner and other reports and material pertaining to the matter shall be placed before the Examination Committee.

(4) The Committee shall give a personal hearing to the candidate as indicated in the notice issued to the candidate by the Controller of Examinations and shall also consider the report of the Board of Conducting Examiners, and other reports and material relevant to the case, if any."

From the above mentioned provisions, it is very clear that all the instances of unfairmeans in the examination whether reported by the Centre Superintendent/ Invigilators/Supervisors/Observers/Examiners or otherwise shall be placed before the appropriate Board of conducting examiners by the Controller of Examination as soon as practicable, but preferably before the results of the relevant examination are passed for publication. Admittedly, the alleged report of the Centre Superintendent was submitted after the result was published by the University and on that basis steps have been taken for cancellation of the result. Once the result is published, the authorities are estopped to cancel the same on the basis of the so-called materials collected from the possession of the candidate. After the result was published, any steps taken by the Controller of Examination of the Utkal University on the so-called prima facie evidence calling for the show cause is an empty formality and that itself is not in consonance with the provisions contained in Statute 214. It is admitted in the counter affidavit that the Centre Superintendent instead of dispatching the incriminating materials seized from the candidate with answer sheet bearing Roll No. 492D205, the said material was sent along with the answer sheet of the candidate bearing Roll No. 492D295 in a sealed cover, as a result of such act of mis-sending, the answer sheet of the candidate (petitioner) bearing Roll No. 492D205 was valued and

result was published declaring her pass and fact of such mis-sending of the answer sheet by the Centre Superintendent is not within the knowledge of the petitioner. But fact remains that her answer sheet was duly evaluated the result was published by the authorities and on that basis the petitioner got employment and is continuing in service. Therefore, at this stage, the cancellation thereof having been contrary to the provisions contained in Statute 214, the authorities could not have passed the impugned order depriving the petitioner to continue in service.

9. Similar question came up for consideration before this Court in *Rajanikanta Priyadarshy Vs. Utkal University* and this Court taking into account the various judgments of the apex Court has held that the action of the authorities is in gross violation of the principles of natural justice inasmuch as violative of the principle of estoppels.

10. In *Sanatan Gauda Vs. Berhampur University and others*, AIR 1990 SC 1075 : (1990) 70 CLT 241 : (1990) 2 JT 57 : (1990) 1 SCALE 647 : (1990) 3 SCC 23 : (1990) 2 SCR 273 : (1990) 1 UJ 661 , the apex Court has held that the candidate having been admitted to law course and 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. Similar view has also been taken in *Prakash Chandra Kuanr Vs. Secretary, Board of Secondary Education and Others*, (1996) 82 CLT 783 : (1996) 2 OLR 268 and *Amarjeet Jena v. Council of Amarjeet Jena Vs. Council of Higher Secondary Education, Orissa and Others*, AIR 1999 Ori 129 .

11. 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 and consequentially admit card was issued in his favour and 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 and therefore the results of the examination should be declared.

12. 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 recognized 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 recognized by the Council and thereafter the result was published.

13. This Court in *Narasingha Pattnaik Vs. Board of Secondary Education Odisha and Others*(2015) 119 CLT 1099 also held that cancellation of result of the

petitioner having been published, it cannot be construed that the result of the petitioner has not been published.

14. Applying the above mentioned principles of law to the present context, since the result of the petitioner has already been published and on that basis she has already joined in service and by virtue of the interim order passed by this Court on 23.2.1998 the petitioner is continuing in service, the impugned cancellation of result in Annexure-8 dated 24.1.1998 is liable to be quashed and is hereby quashed.

15. The writ application is allowed. No cost.