
(2013) 05 OHC CK 0009
In the Orissa High Court
Case No : Writ Petition (C) No. 1769 of 2013

Smt. Jyotsna Rani Tripathy	Vs	APPELLANT
State of Orissa and Another		RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Citation : (2014) 117 CLT 269 : (2013) 2 OLR 681

Hon'ble Judges : M.M. Das, J;B.K. Misra, J

Bench : Division Bench

Advocate : B.K. Sharma and A.U. Senapati, for the Appellant; P.K. Mohanty, D.N. Mohapatra, J. Mohanty, P.K. Nayak and S.N. Dash, Government Advocate for O.P. 1, for the Respondent

Judgement

M.M. Das, J.—The petitioner in this writ petition has sought for quashing the marks obtained by her in "Law of Contract" papers and issuing a direction to the opposite party No. 2 to issue a fresh mark sheet to her by taking into account the original marks awarded to her in the said paper which, according to her, is 86. Facts of the case reveal that the petitioner pursuant to the advertisement under Annexure-1 published by the Odisha Public Service Commission (hereinafter referred to as "O.P.S.C.") made an application to appear in the competitive examination consisting of three parts, viz. Preliminary Written Examination, Main Written Examination and Interview to be conducted by the O.P.S.C. under the provisions of the Odisha Superior Judicial Service and Odisha Judicial Service Rules, 2007 (as amended from time to time) for recruitment to 55 posts of Civil Judges in Odisha Judicial Service under Law Department by direct recruitment in the Pay Scale of Rs. 27,700-770-33,090-920-40,450-1080-44,770/- with usual Dearness Allowances and other allowances as sanctioned by the Government of Odisha from time to time.

2. The petitioner being successful in the Preliminary Written Examination sat for the main Written Examination, which was conducted from 4.8.2012 to 8.8.2012.

The list of successful candidates, who were eligible for interview, was published on 1.10.2012, but the name of the petitioner did not find place in the said list. Immediately after publication of the result of the main Written Examination, the petitioner applied for her marks obtained in the said examination and the said mark sheet was supplied to her on 24.11.2012, which has been annexed as Annexure-2 to the writ petition. After receiving the same, the petitioner came to know that she has secured 337 marks out of 750 marks, i.e. 44.93% of marks in aggregate and not less than minimum of 33% marks in each subject.

3. As per Rule 24 of the Rules, the candidates who have secured not less than 45% of aggregate marks and not less than minimum of 33% of marks in each paper in the main written examination were to be called for viva-voce test. Since the petitioner secured 44.93% of marks in aggregate though she secured much more than 33% of marks in each of the papers, she was not called for the viva-voce test. As per the notice dated 19.7.2012 issued by the O.P.S.C., the petitioner applied for photocopies of the answer scripts of all the papers, which were obtained and have been annexed as Annexure-3 series to the writ petition.

4. It is alleged by the petitioner that a mere perusal of her answer script in "Law of Contract" paper would reveal that she was awarded with 86 marks for the answers given to Question Nos. 4, 6, 7, 9 and 10. The said figure of 86 marks has been encircled and adjacent to it "75" has been shown in the answer script which mark has been taken into consideration, for which she secured in total 44.93% of marks.

5. During course of hearing, we called for the original answer scripts, copies of which have been annexed to the writ petition. On scrutinizing the same, we found that the allegation made by the petitioner with regard to reduction of her marks as awarded originally in "Law of Contract" paper is correct. However, it appears that though in each place where the marks have been reduced, the signature of either the valuer or the Head Examiner is not there, but it can be gathered that the reduction has been made by the Head Examiner. We also went through some of the answers given by the petitioner in "Law of Contract" paper as well as "General English", "Procedural Law", "Law of Crime & Law of Torts" and "Law of Property" papers where the petitioner has secured 72, 63, 65 and 62 marks respectively, no deduction whatsoever have been made from the said marks given by the valuers at the instance of the Head Examiners in those papers.

6. Though we are aware of the settled position of law that the Court is not to revalue the answer scripts of an examinee, but taking into consideration that the examination was conducted for recruitment of Judicial Officers to the post of Civil Judge (Junior Division) and ultimately such successful candidates are to discharge their judicial duties on being appointed under the administrative control of the High Court, we thought it proper to peruse the standard of the answers given by the petitioner. We are not surprised to find that the standard of the answers given by the petitioner in all the above papers clearly depict the

clarity of thought and the fact that the petitioner has a clear conception on the subjects relating to the aforesaid papers.

7. Considering this peculiarity existing in this particular case, we are of the view that since the petitioner was not selected in the main written examination being unsuccessful for lack of 0.07 percentage of marks, this is a fit case where a direction should be issued to the O.P.S.C. to get the answer script of the petitioner in "Law of Contract", paper reexamined and revalued by an expert in the said subject and if it is found that the petitioner is entitled to any higher mark in the said paper, which, if added to the aggregate, will make her qualify to go through the main examination so as to face the interview, the O.P.S.C. should allow the petitioner to face the interview in the next recruitment test directly without requiring the petitioner to again appear in the Preliminary Written Examination as well as the Main Written Examination. We, therefore, direct the O.P.S.C. to get the "Law of Contract" Paper of the petitioner re-evaluated through an expert and taking the marks awarded by such expert in such paper, if the O.P.S.C. finds that the petitioner would have passed the Main Written Examination qualifying herself to face the viva-voce test, it shall allow the petitioner to face the interview in the next recruitment test directly without requiring her to appear in the Preliminary as well as Main Written Examination again. Such exercise shall be positively completed by the time the candidates get selected in the next recruitment test for facing the interview. The Chairman, O.P.S.C. shall act on production of a certified copy of this order before him by the petitioner.

With the aforesaid direction, this writ petition is disposed of.

B.K. Misra, J.

I agree.