
(1996) 11 OHC CK 0016

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7154 of 1995

Smt. Minati Kumari Mohapatra

APPELLANT

Vs

Utkal University and Another

RESPONDENT

Date of Decision : 15-11-1996

Acts Referred:

Citation : (1997) 1 OLR 9

Hon'ble Judges : S. Chatterji, J;Dipak Misra, J

Bench : Division Bench

Advocate : Biswanath Rath, B. Senapati, S.N. Mohapatra, S. Ghosh, J. Rath, S.K. Jethy and M.K. Panda, for the Appellant; Sanjib Swain, for opp. parties 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

S. Chatterji, J.—The present writ application is at the instance of one Smt. Minati Kumari Mohapatra. She prays inter alia :

"(i) issue a writ of mandamus directing the opposite parties to accept the application form of the petitioner with the documents and fees attached therewith;

(ii) issue a writ of mandamus directing the opposite parties to allow the petitioner to appear in the final examination for B.Ed., 1995; and

(iii) pass such other order or orders as may be deemed fit and proper."

2. The petitioner is aggrieved by the action of the opposite parties, i. e., Utkal University represented by the Vice-Chancellor and the Controller of Examinations, Utkal University, Vani Vihar illegally returning application form submitted by the petitioner for appearing in B.Ed. Final Examination, 1995 as non-collegiate (private) candidate through Utkal University and thereby depriving her from appearing at the said examination.

3. It is stated in details that the petitioner filled up the forms to appear in the B.

Ed Final Examination as a non-collegiate candidate in 19-0 as well as 1991. But she could not appear. Once again petitioner applied to appear at the examination in 1992. This time she also could not appear and she was declared "failed".

4. She submitted an application to appear for the year 1995, but as the S3me was not entertained, she has moved this Court seeking reliefs as indicated above.

5. The writ petition is contested by the opp. parties 1 and 2 by filing a comprehensive counter - affidavit. The University authorities have referred to the instructions meant for all private candidates intending to appear at the B. Ed. Examination, 1995. The instructions provide eligibility criteria. It is reproduced below :

"1.. Eligibility for fresh, candidates-

Any registered student of this University or any student who seeks to be registered as student of this University fulfilling all conditions in those instruction; and

(i) has passed the Bachelor Degree -Examination of this University or any other examination recognised as equivalent thereto with Education as one of the subjects; or

(ii) has passed the Basic Training School Examination or Teachers Certificate Examination from a Basic/Secondary Training School in Orissa or any other examination may be permitted to appear at the examination as non-collegiate candidate subject to fulfilment of all other conditions..."

6. It is pointed out that admittedly petitioner is not having C. T. or equivalent qualification. That apart the petitioner did not possess "Education" as one of the subjects in Graduation level examination. Therefore, the petitioner is not at all eligible to appear at the private B. Ed. Examination, 1995. It is also mentioned therein that the petitioner was a student of a non-recognized and non-affiliated private B. Ed. college and has completed the course. In the year 1990 in view of the Government decision and the decision of the University authorities all the students of private B.Ed. colleges having no concurrence and affiliation, were allowed to appear at the Special B. Ed. Examination, 1990 as an one time dispensation. Thereafter no private B. Ed. colleges are existing now. University authorities, however, had given two more chances to the failed and absentee, candidates of 1990, viz., for the next two years 1991 and 1992 examinations. In spite of the three aforesaid chances, the. petitioner could not pass B. Ed. examination and as such under the present instructions the petitioner is not entitled and the refusal is well justified.

7. There is another affidavit filed on behalf of, the University. It is also disclosed that in the present case petitioner was allowed to appear at the Special B. Ed. Examination, 1990. She chose to remain absent. Subsequently she was allowed to appear at the 1991 and 1992 examinations. But she filled up the form only and did not appear in the examination.

8. At the time of final hearing of the matter, our attention is drawn to the instructions to non-collegiate (private) candidates intending to appear at the Bachelor's Degree in Education examination Of 1995. .

9. Both the learned lawyers for the petitioner and for the University authorities" have made much emphasis upon instructions No. 2. For better appreciation the same is quoted herein below:

"2. Eligibility for absentee/Tailed candidates

A candidate who has been enrolled for the B. Ed. Examination earlier but absented or failed in the examination may be permitted to appear the .B. Ed. Examination of 1990 with the same alternative special papers. He/She cannot change the alternative special papers."

10. Mr. Swain Iearned counsel for the University has interpreted this paragaph-2 of the instructions regarding the eligibility criteria for the candidates other than the candidates who were given a special chance in 1990 and subsequent two chances in 1991 and 1992. The learned lawyer for the petitioner submits that" the said instruction has no reservation arid the same does not exclude the candidates who had been given special chances in the year 1990 or subsequently in 1991 and 1992.

11. Admittedly this instruction is for the B. Ed. Examination,. 1995. To the instructions we neither can add anything nor can we ignore anything of it. We are required to interpret it as it i3 unless it leads to absurdity. The plain and simple reading of paragraph-2 of the instructions of 1995 clearly leads to the conclusion that the same is applicable to all non-collegiate (private) candidates intending to appear at the B.Ed. Examination of the year 1995. There is no room for holding any special class or classification be it reasonable classification or be it unreasonable classification. Specially we have heard the submission of Mr. Swain and considering diligently we again appreciate his submission that the eligibility criteria as it appears in paragraph-2 of the year 1995 is only available to private non-collegiate candidates other than the special class candidates who were permitted in the year 1990. Our attention was also drawn to the proceeding of the meeting held in the office room of the Chancellor on 22-5-1990 and for relaxation of the rule for the year 1990 for which no precedent should be created. Nobody doubts and disputes about such relaxation. But the candidates who were given two chances to appear in 1990 were also given chances for the years 1991 and 1992 de hors the proceeding held on 22-5-1990. If the University authorities permitted the candidates to appear in the year 1990 and again in subsequent years 1991 and 1992, we cannot rule out their appearance in the year 1995 when there is no. specific mention that the eligibility criteria is confined to the candidates other than the candidates who appeared in 1990 or subsequently as a special class. Paragraph-2 of the instructions enables the candidates who intend to appear in the year 1995. it is unambiguous and permits ail categories. Mere apprehension that to permit the petitioner would open Hood

gate for other similar candidates, is without any relevance. University authorities could have debarred the examinees who failed or absented in the year 1990 or in the subsequent years 1991 and 1992 to appear in the year 1995. We cannot interpret this paragraph-2 of the instructions regarding eligibility by importing something which is nonexistent therein. Besides in this case petitioner was permitted to appear at the B. Ed. examination held on 20th November, 1995 by interlocutory order dated 7-11-1995. This order, however, was made to permit the petitioner without prejudice and subject to finalisation of the case. It is brought to our notice that the examination at the Centre was subsequently cancelled and the petitioner alongwith others have been permitted again to fill up the form. The petitioner is waiting to appear at the ensuing examinations.

12. Considering all these aspects together we allow this writ petition holding inter alia, that the petitioner had the eligibility to appear at the 1995 examination "and she would be entitled to the benefits thereof. We make it dear that as the examination has already been held, there is no scope for any other candidate to ask for filling up the form or to embarrass the University authorities in any manner. The apprehension expressed by Mr. Swain really does not exist. It will be open to the University authorities to issue appropriate instructions about the eligibility for the year 1996 onwards.

No order as to costs.

Dipak Misra, J.

13. I agree.