
(2008) 07 OHC CK 0094
In the Orissa High Court

Sri Prabalakanti Jana

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Citation : (2008) 106 CLT 760 : (2008) 2 OLR 1000 Supp

Hon'ble Judges : I.M. Quddusi, C.J.;A.K. Parichha, J

Bench : Division Bench

Judgement

I.M. Quddusi, C.J.—These are two review petitions filed against the common Judgment/ order passed on 4.5.2006 in the three Writ Petitions i.e. W.P.(C) Nos. 9262, 9839 of 2004 and 687 of 2005.

2. W.P.(C) No. 9262 of 2004 was filed by Sri Tarak Nath Sasmal who is Petitioner in Review Petition No. 101 of 2006 and W.P.(C) No. 9839 of 2004 was filed by Sri Prabalakanti Jana, Petitioner in Review Petition No. 100 of 2006. The Writ Petitions were filed for a direction to Member Secretary, Orissa State Board of Pharmacy, Bhubaneswar to declare their results and issue certificates of Diploma in Pharmacy in their favour.

3. The brief facts of the case are that after completing their higher secondary-studies, they submitted applications in prescribed form for admission to Diploma in Pharmacy course in Pharmacy Colleges of Orissa for the year 2000-01 and after considering their applications and being satisfied with their eligibility, they were directed to take admission in Sidheswar College of Pharmaceutical Science, Amarda Road in the district of Balasore. It is claimed by the Petitioners that they pursued their studies in the said college and appeared in Part-I and Part-II examinations on the strength of admit cards issued by the Orissa State Board of Pharmacy, Bhubaneswar and the said Board also issued mark sheets in their favour. They claimed that after completing Part-I and Part-II Courses, they became eligible for practical training, which forms Part-III of the Course and on the basis of the authority granted by Opposite Party No. 4, they could take practical training in different hospitals. After successful completion of the course,

they repeatedly requested the Board to declare their result and issue certificate of Diploma in Pharmacy in their favour, but the Board did not declare their result on the plea that they did not possess the requisite minimum qualification for admission into Diploma in Pharmacy course. According to the Petitioners, when they were duly admitted to the course after scrutiny of the documents, certificates etc. and were allowed to appear in the examinations and took practical training, there was no scope for the Opposite Parties to cancel their results and withhold their certificates due to lack of requisite minimum qualification for admission into the course. It is specifically claimed by the Petitioners that they passed the Higher Secondary Course with required subjects, namely, Physics, Chemistry, Biology etc. and were, therefore, eligible for admission into Diploma in Pharmacy course. They alleged that the action of the Opposite Parties in withholding their certificates is tainted with malice and arbitrariness and so direction should be issued from this Court asking them to issue Diploma Certificates in their favour.

4. The case of the Opposite Party No. 2 was that the Petitioners do not possess the qualification prescribed under Regulation-5"of the Regulation, 1991 for Diploma in Pharmacy Course and accordingly were ineligible for admission into the said course. The Petitioners passed Higher Secondary Course in Vocational Stream which is never equivalent to Intermediate of Science or 1 st year of the three year Degree Course in Science or 10 + 2 Examination (Academic Stream) in Science or Pre-degree examination in Science as prescribed in Regulation 5 of the Regulations, 1991 and Opposite Parties 2 and 3 have also not declared the Higher Secondary Vocational Course as equivalent to examinations mentioned in Regulation 5.

Regulation 5 of the Regulations is quoted hereunder:

5 (Minimum qualification for admission to Diploma in Pharmacy Part-I Course-A pass in any of the following Examinations with Physics, Chemistry and Biology or Mathematics).

- (1) Intermediate examination in Science;
- (2) The first year of the three year degree course in Science.
- (3) 10 + 2 examination (academic stream) in Science;
- (4) Pre-degree examination;
- (5) Any other qualification approved by the Pharmacy Council of India as equivalent to any of the above examination.

Provided that there shall be reservation of seats for Scheduled Caste and Scheduled Tribes candidates in accordance with the instructions issued by the Central Govt./State Govts./Union Territory Admns. as the case may be from time to time.

5. A perusal of the above quoted provision in Regulation 5 shows that for

appearance in the Examination in Diploma in Pharmacy, one should have passed the Intermediate examination in Science or the first year of the three year degree course in Science or 10 + 2 examination (academic stream) in Science or Pre-degree examination with the subjects Physics, Chemistry and Biology or Mathematics.

6. The claim of the review Petitioners was that they have passed 10 + 2 examination (Academic Stream) in Science with Physics, Chemistry and Biology subjects and not in Vocational stream. The review Petitioner Tarak Nath Sasmal has produced his Mark-sheet of 1999 of West Bengal Council of Higher Secondary Education in which the Institution Code has been mentioned as 0501 and the Number of the Mark-sheet is B0673 and it is specifically mentioned "Vocational Stream Courses" 1999 and he has been awarded marks in Vocational area as 33 in Theory in AGEB and 54 in Theory in AGCC and 289 in Practical in AGCC. Therefore, it cannot be said that he had passed the West Bengal Council of Higher Secondary Examination (Academic Stream) in Science Course.

7. However, review Petitioner Prabalkanti Jana has filed his copy of the Mark-sheet of West Bengal Council of Higher Secondary Education, 1998 in which the institution Code has been mentioned as 02086 and the Mark-sheet Issue number as B182081 and it has been mentioned therein as "General Stream Courses". He has got mark in compulsory Elective subjects as Biology, Chemistry and Geography and Optional Elective as Physics. Therefore, it cannot be said that he has not passed the West Bengal Council of Higher Secondary Education-cum-General Stream Course with Physics, Chemistry and Biology subjects.

8. In view of the above mentioned facts and circumstances, we dismiss the RVWPET No. 101 of 2006 filed by Sri Tarak Nath Sasmal, as no case is made out for review of the order passed in W.P.(C) No. 9262 of 2004. However, the RVWPET No. 100 of 2006 filed by Sri Prabalkanti Jana is allowed. The Writ Petition No. 9839 of 2004 stands allowed and Opposite Party No. 3, i.e. the Member Secretary, Orissa State Board of Pharmacy, Bhubaneswar is directed to issue certificate of Diploma in Pharmacy in favour of the review Petitioner in RVWPET No. 100 of 2006 as expeditiously as possible preferably within a period of two months from the date of receipt of writ.

A.K. Parichha, J.

I agree.