

(2024) 03 OHC CK 0148
In the Orissa High Court
Case No : Writ Petition (C) No. 28959 Of 2021

Sujata Parija

APPELLANT

Vs

Berhampur University & Others

RESPONDENT

Date of Decision : 18-03-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2024) 03 OHC CK 0148

Hon'ble Judges : Sashikanta Mishra, J

Bench : Division Bench

Advocate : Dayananda Mohapatra, Anshuram Mishra, S.C. Dash, S.K., Das

Final Decision : Allowed

Judgement

Sashikanta Mishra, J.

1. Being aggrieved by the cancellation of her M.A. degree by the Berhampur University, the Petitioner has approached this Court seeking the following relief;

"Under the aforesaid circumstances the petitioner most humbly prays that this Hon'ble Court may graciously be pleased issue rule Nisi calling upon the opposite parties to show cause;

As to why the impugned order in Annexure-8 and the resolution of the Syndicate/ Council in Annexure-9 Series shall not be quashed.

And as to why the certificate issued to the petitioner by the University vide Annexure-2 shall not be restored and held valid and operating;

And as to why the petitioner shall not be held eligible to get all consequential benefits on the basis of the certificate and mark sheet issued vide Annexure-2;

And if the opposite parties fail to show cause or show insufficient cause to make the said rule absolute by issuance of an appropriate writ(s), order(s), direction(s) as this Hon'ble Court may think fit and proper;

And/or to pass such further order(s), direction(s) as this Hon'ble Court deems just, fit and proper under the facts and circumstances of the present case.

And for this act of kindness, the petitioners shall as in duty bound ever pray."

2.(i). The facts of the case briefly stated are that the Petitioner having completed her graduation from S.V.M. College, Jagatsinghpur in the year 1986, appeared in the M.A. examination in History under Utkal University as non-collegiate candidate and passed in the 3rd division in the year 1989. Basing on such qualification she was engaged as Lecturer in History on 13.11.1990 in Kaduapada Higher Secondary School (Girls') in the district of Jagatsinghpur against the 2nd post. The School was subsequently renamed as Gadi Bramha Mahila Higher Secondary School, Kaduapada. In order to improve the percentage of marks, the Petitioner took admission under Berhampur University as non-collegiate candidate in the year 1993, but could not secure her desired marks because of illness. She repeated such examination to improve her percentage of marks under Berhampur University in the year 1996 and passed securing 59.4% marks. The University issued P.G. Certificate and mark sheets, copies of which are enclosed as Annexure-2 series.

(ii) The Petitioner submitted such certificates before the College authority, who recommended her name for grant-in-aid in consideration of her marks.

(iii) A dispute arose with regard to holding of the 2nd post between the Petitioner and one Nirmala Kumar Biswal, the intervener (Opposite Party No.6), who, though appointed against the 3rd post laid her claim as against the 2nd post. The dispute was taken to the State Education Tribunal and after hearing, the Tribunal held that the Petitioner's appointment against the 2nd post is valid. According to the Petitioner, the intervener-Opposite Party No.6 had challenged the judgment of the Tribunal in an appeal before this Court, but the same was dismissed.

(iv) Having thus failed in her attempt to be considered against the 2nd post, the Opposite Party No.6 submitted a written objection before the authorities of the Berhampur University alleging that the Petitioner was ineligible to appear in the M.A. examination for which the certificate issued by the University was invalid.

(v) The University issued a show cause notice dated 17.11.2012, basing on such objection, to the Petitioner stating that she had suppressed the fact of her passing M.A. examination earlier from Utkal University with repeat examination and thereafter appeared as non-collegiate candidate under Berhampur University in 1993-94, which was contrary to the prevailing rules and regulations to the effect that a candidate cannot appear in the M.A. examination twice on the same subject under different Universities.

(vi) The Petitioner challenged the aforesaid show cause notice before this Court in W.P.(C) No.24273/2012 refuting the allegation of suppression of facts and questioning the legality of the show cause notice issued after long lapse of 16

years. This Court, vide order dated 18.11.2019 directed the University to consider the representation of the Petitioner and to pass appropriate order giving opportunity of hearing.

(vii) The Petitioner submitted another detailed representation with prayer to drop the allegations. She personally appeared on 12.2.2020 and asked for the application form submitted by her at the relevant time, so that the allegation that she had suppressed the material facts could be rebutted, but the application form was not provided on the ground that the same had been eaten by white ants. The matter was referred to the Syndicate and Academic Council, which resolved to withdraw the result/degree of the M.A. examination of the Petitioner issued earlier in August, 1996 and asked the Petitioner to surrender the original mark sheet/certificate as per order dated 5.11.2020, copy of which is enclosed as Annexure-8.

3. On such facts, it is stated that the action of the University in withdrawing the degree awarded to the Petitioner after lapse of 16 years is illegal and unjustified besides being hit by the principle of estoppel. It is further stated that the University authorities have not been able to substantiate the allegation that there was any suppression of material facts by the Petitioner at the relevant time but merely on the objection submitted by an outsider having a vested interest, they have taken such a drastic step, which cannot be countenanced in law.

4. The University has filed a preliminary affidavit refuting the averments made in the Writ Petition. It is stated that on the basis of a letter of the Chancellor dated 19.1.2011 enclosing the representation of the intervener-Opposite Party No.6, the University came to know that the Petitioner had earlier passed M.A. in History from Utkal University in 1991 before applying to the Berhampur University for appearing in M.A. examination in the same subject also. Under the prevailing regulation and instructions of the University for the P.G. course, no student who has passed P.G. examination except from Berhampur University can appear in another P.G. examination. Had the Petitioner stated so, she would not have been allowed to appear in the same subject. Therefore, she had suppressed the fact of her passing P.G. examination from Utkal University in the same subject. Pursuant to the order of this Court in the earlier Writ Petition filed by the Petitioner, opportunity of personal hearing was given to her by the Controller of Examination and necessary documents as sought for by her were also duly supplied. The Controller of Examination called upon her to attend the hearing with all original documents, but she could not produce the same and produced only photo copies. The matter was placed before the Academic Council which resolved on 8.10.2020 to withdraw the result/degree of the Petitioner in M.A. in History granted in September, 1993 and the subsequent examination for improvement granted in August, 1996. The resolution of the Academic Council being placed before the Syndicate, was duly approved on 12.10.2020 and a notification dated 5.11.2020 was issued with direction to the Petitioner to surrender the original mark sheets/certificates issued to her. On such averments,

it has been stated that the Petitioner would not have been allowed by the University to appear in the M.A. examination in the same subject as she had suppressed the fact of passing of the same examination from Utkal University.

5. Heard Mr. Dayananda Mohapatra, learned counsel for the Petitioner, Mr. Anshuram Mishra, learned counsel for the Berhampur University, Mr. S.C. Dash, learned counsel for the Principal of the College and Mr. S.K.Das, learned counsel for the intervener-Opposite Party No.6.

6. Mr. D.Mohapatra would argue that the action of the authority in agitating the issue after 16 long years of issuance of the degree in favour of the Petitioner and that too at the instance of an outsider is squarely hit by the principle of estoppel and otherwise unjustified. In any case, it has been the consistent case of the Petitioner that she had not suppressed any material fact at the time of submitting application for appearing in the M.A. examination before the Berhampur University. The onus was on the University authorities to prove otherwise, which they miserably failed to do. Therefore, Mr. Mohapatra argues, the Petitioner could not have been held guilty of suppression of facts. That apart, the relevant regulation-F(b)(i) and (c) (i) only postulates that there is a bar for a candidate to appear in the M.A. examination in one subject if he/she has acquired P.G. degree in another discipline/subject. There is no bar for a candidate to appear in the P.G. examination under Berhampur University if he/she has already appeared and passed P.G. examination in the same subject from another University.

7. Mr. Anshuram Mishra, learned counsel, on the other hand, has referred to the Instructions to Non-Collegiate candidates issued by the University prevalent in 1993, Clause-F (c) (i) mandates that no candidate who has passed the M.A. examination except from Berhampur University will be allowed to appear in another M.A. examination. Mr. Mishra argues that in view of the bar as above, the Petitioner could not have appeared in the M.A. examination in History having already passed such examination from Utkal University. He further submits that it is evident that she had appeared in the examination of the Berhampur University suppressing the fact of her earlier degree from Utkal University as otherwise she would not have been allowed to appear in the Berhampur University. Mr. Mishra concludes his arguments by submitting that the University authorities have acted entirely in terms of the Regulations/Instructions and therefore, there can be no estoppel against law.

8. Mr. S.C.Dash, learned counsel, submits that the School has no role to pay in the dispute and it is for the University to decide whether the degree and certificate issued in favour of the Petitioner is valid or not. The School would abide by whatever is finally decided in the matter.

9. Mr. S.K.Das, learned counsel for intervener (Opposite Party No.6) referring to the objection filed by his client before the Chancellor argues that the petitioner by suppressing the material fact managed to get the M.A. degree from

Berhampur University improving her marks only with the intention of getting grant-in-aid. Since the degree so obtained by her is a product of fraud, it has no force in the eye of law and the University very rightly cancelled the same. He also relies upon the Instructions issued to Non-Collegiate candidates to contend that except for candidates of Berhampur University no other candidate is entitled to appear in an examination in the same University to improve his/her earlier performance.

10. It is borne out from the records that a complaint was submitted by the intervener (Opposite Party No.6) on 10.1.2011 addressed to the Controller of Examination, Berhampur University, copy of which appears to have been submitted also to the Chancellor. The Office of the Chancellor forwarded the complaint to the Registrar of Berhampur University by letter dtd.19.1.2011 with direction to take appropriate action in the matter. This is the genesis of the dispute that is sought to be adjudicated in the present Writ Petition. It is stated that the Petitioner acquired M.A. degree in History from Utkal University in 1989 and again in the year, 1991 through a repeat examination. Thereafter she appeared in M.A. examination in History in 1993 and repeated the same examination in the year 1996 from Berhampur University as a non-collegiate candidate. Though all these facts have not been explicitly averred in the Writ Petition, yet the same are borne out from the complaint dated 10.1.2011 submitted by the Opposite Party No.6. Basing on such complaint, the Controller of Examination of Berhampur University issued a show cause notice to the Petitioner on 17.11.2012 (Annexure-3) stating all the above facts and specifically alleging that she had suppressed the fact of passing M.A. in History from Utkal University. Reference was also made to the prevailing rules/regulations to the effect that a candidate cannot appear in the examination twice on the same subject in different Universities. In her detailed reply (Annexure-7) submitted on 10.1.2020 (pursuant to order dtd.18.11.2019) passed in W.P.(C) No.24273/2012, the Petitioner related all the necessary facts including the fact of her passing M.A. examination earlier from Utkal University and by specifically taking the plea that she had disclosed such fact in her application at the time of registration as Non-Collegiate candidate. It was also stated that it was the duty of the University not to have permitted her to appear in the M.A. examination in 1993 as a non-collegiate candidate. But having done so, the University cannot question the degree so awarded to the Petitioner after long lapse of 16 years.

11. Thus, the crux of the dispute appears to be two fold;

- (a) whether the Petitioner is guilty of suppression of material facts; and
- (b) whether it was permissible for the Petitioner to have appeared in the M.A. examination in History under Berhampur University having earlier passed such examination from Utkal University.

12. It has been argued by learned counsel appearing for the University as well as the intervener-Opposite Party No.6 that suppression of material facts, in this

case relating to passing of M.A. examination in History from Utkal University, amounts to fraud. There is no dispute with the proposition that suppression of material facts amounts to fraud, but then it is also well settled that fraud is to be specifically pleaded and proved. In the case of Union of India and others vs. M.Bhaskaran 1995 SCC Supl (4) 100, the Supreme Court has observed that if by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of the employer. 'Fraud' means an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. Further, the expression 'Fraud' involves two elements, deceit and injury to the person deceived. Misrepresentation itself amounts to fraud. A fraudulent misrepresentation is called deceit. It is a fraud in law, if a party makes representation, which he knows to be false. However, fraud is proved only when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Reference in this regard may be had to the judgment of the Supreme Court rendered in the case of Ram Chandra Singh Vs. Savitri Devi (2003) 8 SCC 319. The bottom line is, wilful suppression of material facts as has been alleged in the instant case, would amount to an act of fraud. At this juncture it may be apt to refer to the oft-quoted maxim *fraus et jus nunquam cohabitant* which means 'fraud and justice never dwell together'. This is a pristine maxim oft quoted in the judgments of the High Courts and the Supreme Court of this Country.

13. Coming to the facts of the present case, in the light of the legal propositions referred to in the preceding paragraph, this Court finds that the basic allegation against the Petitioner is that she had suppressed the fact of possessing M.A. degree in History from Utkal University at the time of applying for appearing in M.A. examination in History again in Berhampur University in the year 1993. However, not a scrap of material is put forth to substantiate such allegation. The burden of proving the allegation obviously rests on the person making the same, in this case, the University more so on the face of specific denial thereof by the Petitioner. Surprisingly, the University has taken a stand that the application form submitted by the Petitioner is not available being eaten by white ants. So how could it arrive at a conclusive determination that the Petitioner had suppressed the material facts in her application form? As it appears, suppression is being inferred, but then in the absence of the application form itself such inference would be too farfetched to be accepted. This Court is therefore, of the considered view that the basic allegation that the petitioner had suppressed material facts while applying for appearing in the M.A. examination in Berhampur University is not established at all.

14. This takes the Court to the second point in dispute that is, whether it was otherwise permissible for the Petitioner to have appeared in M.A. examination in Berhampur University after having passed such examination earlier from Utkal University. In this regard, as already stated, the clauses of Regulation of the

University for Non-Collegiate candidates for M.A. Degree Examination and Instructions issued to such candidates in the year 1993 have been relied upon. In the regulation under Chapter-V titled 'General Provisions', a non-collegiate candidate has, inter alia, been defined as 'who has not undergone the prescribed courses of study in College affiliated to the University or in a P.G. Department of the University and has been exempted by the University from production of Certificate of attendance'. So a candidate not being a student of any college affiliated to the University or in a P.G. Department of the University can be a non-collegiate candidate. Regulation 14 reads follows;

"A candidate after passing M.A. examination of this University or any other University recognized as equivalent thereto may, on payment of the requisite fees, be admitted to the M.A. examination of this University in a subject other than the one in which he/she was previously examined and if he/she attains the standard prescribed for the degree, may be granted a diploma of having passed the M.A. examination in the subject and class in which he/she passed."

Thus, a candidate passing M.A. examination of any other University (recognized as equivalent) can be admitted to M.A. examination in a subject other than the one in which he/she passed.

15. In the instructions issued to non-collegiate candidate in 1993, Clause-F (c) (i) reads as follows;

"No candidate who has passed the M.A. examination except from Berhampur University will be allowed to appear in the M.A. examination. A candidate after passing M.Sc. examination will not be allowed to register for any M.Sc. or M.A. examination as a non-collegiate candidate".

If the provisions of the Regulations referred to above and the Instructions to Non-Collegiate candidates are harmonized, it would imply that there is a bar for a candidate to appear in another M.A. examination in the same subject though there is no bar to appear in another subject. But then, Clause-14 of the Instructions reads as follows;

"The University reserves the right to allow or not to allow any candidate to appear the examination."

16. Thus, notwithstanding the apparent impermissibility for a candidate of another University with a M.A. degree in one subject to appear in the same examination in the same subject in Berhampur University, the University still has the right to allow the candidate to sit in the examination as reflected in Clause-14 referred above. This is being said because this Court has already held that there is no proof that the Petitioner was guilty of wilful suppression of material facts. If such is the case, then obviously the University cannot take a stand that it was not aware of its own Rules and Regulations, rather by allowing such a candidate to appear in M.A. examination in 1993 and 1996, it must be deemed to have exercised its power under Clause 14 quoted above.

17. As regards the applicability of the law of estoppel, the Supreme Court in the case of Sanatan Gauda vs. Berhampur University and others; AIR 1990 SC 1075 held that having permitted a candidate to appear in the examination, the University was estopped from refusing to declare the result of the said examination on the ground that there was irregularity in the admission. The Supreme Court held that the University authorities ought to have scrutinized the position before permitting him to take the examination, but not having done so, they cannot refuse to publish the results.

In the case of Reeta Vs. Berhampur University and Ors. O.J.C. Nos.2440 of 1985 and 3345 of 1988 a Full Bench of this Court applied the principle of promissory estoppel to a case where the University belatedly declared that the Petitioners have failed in the examination after having declared them to be passed. In such case, it was held that the Petitioner could be protected by the principle of promissory estoppel.

This Court, in a similar matter in the case of Yogesh Kumar Chand Vs. State of Odisha and Others (W.P.C. No.9988/2022) decided on 21.10.2022 took a similar view relying upon the judgments of Sanatan Gauda (Supra) and Reeta (Supra).

18. Even otherwise, it is well settled that even in mandatory provision, under specific circumstances, a party can waive its right. Waiver means relinquishment of one's own right. It is referable to a conduct signifying intentional abandonment of right. It may be express or may even be implied but should be manifest from some overt-act. Waiver involves a conscious, voluntary and intentional relinquishment or abandonment of a known existing legal right. Thus, benefit, claim or privilege, which, except for such a waiver, the party would enjoy. Reference may be had in this regard to the judgment of Apex Court in the case of Sikkim Subba Associates Vs. State of Sikkim (2001) 5 SCC 629.

Here is a case of a person granted an M.A. degree way back in the year 1996, the benefit of which is sought to be taken away referring to the provisions of Regulations/Instructions without there being any proof of commission of fraud by her. This Court would rather place emphasis on equitable considerations particularly in view of the power conferred on the University under Paragraph-14 of the instructions quoted above that the University having allowed the Petitioner to appear in the examination cannot turn around at this distance of time, that too at the instance of a rank outsider and take away the benefit earlier granted by it to the Petitioner.

19. Thus, from a conspectus of the analysis of facts and law as also the rival contentions, this Court holds that the action of the University in issuing the impugned Notification withdrawing/cancelling the M.A. degree of the Petitioner granted in the year 1993 and 1996 is entirely unconscionable in law. As such, the impugned Notification warrants interference by this Court.

20. In the result, the Writ Petition is allowed. The impugned Notification issued by the University under Annexure-8 is hereby quashed. There shall be no order

as to costs.

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