

(2010) 06 OHC CK 0017
In the Orissa High Court
Case No : Writ Petition (C) No. 10965 of 2003

Sukanti Sahoo

APPELLANT

Vs

Vice Chancellor, Utkal University and Others

RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:

Citation : (2010) 110 CLT 571 : (2010) 1 ILR (Ori) 112

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The Petitioner seeks to assail the inaction of the Utkal University in the matter of not according permission to her to appear in the B. Ed Examination for the second time.

2. The scenario of facts reveal that the Petitioner completed her B. Ed Course from Biju Pattnaik College of Science and Education, Bhubaneswar in the academic session of 1991-92. She appeared in the Annual Examination conducted by the Utkal University as a regular candidate in the year 1992 but then her results were not published. Being aggrieved by the said fact she had approached this Court earlier in W.P.(C) No. 6816 of 2003. The said Writ Petition was disposed of on 11.9.2003 with an observation that if the Petitioner has appeared in the examination, her results may be declared. It is submitted, her results were published in the year 1996 by the University and the Petitioner was declared to have failed. The Petitioner then sought permission from the Utkal University authorities to allow her to appear in the examination conducted in the year 1996-97 for the second time. It is alleged that she purchased the forms and submitted the same but then the University authorities did not accept the same. She made a representation before the University authorities and prayed to allow her to appear in the examination, unfortunately no action was taken on the representation filed by the Petitioner vide Annexure-4 for quite a long time. On 12.11.2003 the Controller of Examinations informed the Petitioner that neither

the Private Colleges imparting B. Ed Courses are in existence nor there is any system for permitting candidates who have completed their courses from the private unrecognized colleges to appear in the examination conducted by Utkal University. The said order dated 12.11.2003 (Annexure-5) is assailed in this Writ Petition.

3. After receiving the Rule a detailed counter affidavit has been filed by the Utkal University. It is averred that after 1987 none of the Private Colleges of Orissa imparting B. Ed Courses were granted affiliation or concurrence. However, Colleges which had admitted students without having Government concurrence and University affiliation during the year 1988-89 and 1989-90 were permitted to present their students to appear in the examination so as to avoid prejudice to the students who had prosecuted their studies. Thus according to the University the examination held in the year 1990 was by way of one time privilege granted to all Private Colleges imparting B. Ed Courses, to avoid prejudice to the students who had completed the course. It is further averred that the University framed a special regulation wherein it was provided that the candidates who had prosecuted their studies having been admitted in the Private Colleges for the session 1986-87, 1987-88, 1988-89 and 1989-90 with or without Government concurrence, only would be eligible to appear in the B. Ed Examination held in the years 1987, 1988 and 1990 as one time dispensation. According to the said resolution students who prosecuted their studies in Private B. Ed Colleges having no affiliation from the University or concurrence from the Government were allowed to fill up the forms and appear in the B. Ed Examination, 1990.

The Petitioner, it is submitted did not fill up the forms for B. Ed Examination, 1990 but somehow other could manage to appear in the B. Ed Examination, 1992 through surreptitious means. The Syndicate of the University on 15.1.1993 took a decision that the results of the candidates who had appeared in the B. Ed Examination, 1992 without recommendation of the Committee/Syndicate shall not be published without prior approval of the Syndicate. After scrutinizing the records the Syndicate came to the conclusion that the Petitioner has appeared in the Examination through surreptitious means and did not publish the results.

In the counter affidavit the University has specifically taken a stand that the Petitioner was not eligible to appear in the B. Ed Examination and as such the University authorities have rightly declined to grant permission to her to appear in the examination for the second time.

4. After receiving the counter affidavit a rejoinder affidavit has been filed. Mr. Routray, learned Counsel appearing for the Petitioner took pains to refer several documents and submitted that the University authorities having been permitted the Petitioner to appear in the examination and as her results have been published and she was declared to have failed in all prudence she should be permitted to appear in the examination for the second time.

5. This submission is repudiated by Dr. Rath, learned Counsel for the University.

Relying upon several paragraphs of the counter affidavit he submitted that the Petitioner was not eligible to appear in the B. Ed Examination, 1992 but then some how or the other surreptitiously she could manage to appear in the said examination. Coming to know about the said fact and in consonance with the direction issued by this Court, the matter was scrutinized by the Syndicate and it was found that the Petitioner was not otherwise eligible and she was declared to have failed. Holding special examination in the year 1991 was by way of one time privilege, to all those candidates who had prosecuted their studies in private B. Ed Colleges which were neither approved by the Government nor recommended by the University, however, taking into consideration the plight of the students who have prosecuted their studies a further decision was taken to grant one time privilege to all the students to appear in the B. Ed Examination, 1991. The Petitioner surprisingly did not avail the said privilege. In short according to Dr. Rath, as the Petitioner having failed to make use of the benefit granted by the University, which was in the shape of one time benefit, she cannot claim to permit her to appear in the examination for the second time.

6. Mr. Routray on the other hand submitted that the University authorities having permitted the Petitioner to appear in the examination and published her results is obliged to grant her another opportunity to appear in the examination and is estopped from taking any contrary stand.

7. Heard learned Counsel for the parties at length. Perused the materials available on record. This Court is satisfied that the Petitioner has not come to this Court with clean hands. She has prosecuted her B. Ed Courses in a Private College. She has not availed the opportunity of one time privilege provided by the University. According to the University surreptitiously she managed to appear in the examination in the year 1992 by suppressing vital facts. In course of scrutiny the illegality having come to the knowledge of the authorities, her results were not published and subsequently she was declared to have failed. Publication of such result will not confer upon her a right to appear in the examination for the second time, more so, because her appearance in the examination on the very first instance was illegal. The principles of estoppel cannot be extended to protect an illegality or an action not sanctioned by law. In view of the aforesaid facts and circumstances, this Court finds no infirmity in the decision taken by the Utkal University and declines to interfere with the same.

The Writ Petition is accordingly dismissed.