

ORISSA HIGH COURT: CUTTACK

O.J.C. NO.13920 OF 1999

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Padmalaya Satpathy

...

Petitioner

-Versus-

Vice-Chancellor,

Sambalpur University & another

...

Opp. Parties

For Petitioners : M/s. K.K. Swain, P.N.Mohanty,
D.R.Ray, N.Sarkar,
A.N. Patnaik, A.K. Sahoo,
A.N. Das & R.K.Mohapatra.

For Opp. Parties : M/s. R.K. Dash, D.R. Swain,
P.Prusty , N.C.Nayak &
N.K.Sahu.

Decided on 26.08.2010.

P R E S E N T :

THE HONOURABLE SHRI JUSTICE M. M. DAS

M.M. DAS, J.

J. The petitioner after completing her graduation in the year 1995 with Education as her Honours subject opted for teaching career and wanted to appear in B.Ed. Examination which was scheduled to be held in the year 1996. The petitioner, accordingly, applied to the opp. parties for necessary permission and after due consideration and scrutiny of the documents, she was allowed to appear in the B.Ed. Examination as a private candidate. She filled up her form and was issued with an Admit Card allowing her to appear in the said examination in the year

1996 from the centre C.T.E., Bolangir having roll No. 02 B.Ed.96 P. 341. When the result of the said examination was declared, she did not find her name in the list of successful candidates. After obtaining the mark sheet, it was found that she has become unsuccessful in securing the minimum pass marks in two subjects, i.e., Paper – III and in Oriya Method – II. In the aforesaid subjects, she was awarded 13 and 29 marks respectively though she was required to secure minimum 36 marks in each of the papers. She approached the opp. parties for rechecking of the marks in both the papers. The opp. parties after rechecking communicated to the petitioner that there is no change of marks. Thus, being unsuccessful, the petitioner filled up the form to appear and repeat the examination in both the two papers in which she could not succeed and for which the examination was scheduled to be held in May, 1998. She was allowed to appear in both the aforesaid papers. The petitioner has asserted that though she faired well in both the papers and expected more than 50% marks out of the total marks, but when the results were declared, she found her result to be withheld. Though she attempted to know the reasons for withholding her result, but could not get any satisfactory reply from the opp. parties. Subsequently, her father from a reliable source could know that apart from the aforesaid two back papers, the

petitioner was also not able to secure the minimum qualifying marks, in Paper-II of the B.Ed. Examination, which was held in the year 1996. But in the mark-sheet supplied to the petitioner, which has been annexed as Annexure-1 in connection with B.Ed. Examination, 1996, the petitioner could ascertain that she was awarded 42 marks in the said Paper-II. Accordingly, she filed a representation through her father before the opp. party no. 1 which was sent by registered post. But no response was received from the University authorities regarding her representation in spite of issuing reminder. Ultimately by letter dated 11.10.1999, she was intimated that she has secured 12 marks in Paper – II (Ed. Psychology) and 28 marks in Paper – V +VI of Oriya Method II. The letter also said that the original marks submitted along with the final B.Ed. form seems to be a forged one without any mention of Paper-III marks which the petitioner has repeated for the second time. Aggrieved by such action, she again represented before the University but to no avail. Being aggrieved, the petitioner has approached this Court in the present writ petition seeking quashing of the impugned letter dated 11.10.1999 under Annexure-8 in so far as the petitioner is concerned and a further direction to the opp. parties 1 and 2 to publish the result of the B.Ed. Examination, 1996 taking into account the marks secured in the papers in which she appeared for the second time. A

further prayer has been made to direct the opp. parties 1 and 2 to return the B.A. Examination original mark-sheet, C.L.C. and Ist B.A. Examination original mark-sheet which were submitted by the petitioner before the University authorities at the time of scrutiny of documents for issuance of Admit card.

2. A counter affidavit has been filed on behalf of the opp. parties, inter alia, stating that the petitioner has secured 12 marks in Education Psychology Paper – II and 13 marks in School Management and Problems in Indian Education Paper – III and 28 marks in Content-cum-Methodology of Teaching-Oriya Method Paper – V/VI although the pass marks in all those subjects are 36 respectively. It has been further averred that the petitioner cunningly forged her mark sheet of B. Ed. Examination, 1996 and in place of “12” in Paper – II Education Psychology, the petitioner interpolated it to “42” and submitted the same to misguide the University authorities to allow her to appear as a back paper candidate. This was detected subsequently when the mark was compared with the tabulation register.

3. Considering the nature of the dispute raised by the parties, on 09.09.2008 this Court recorded an order to the following effect:-

“xx

xx

xx”

Mr. Sahu submits that the mark in the subject Education Psychology secured by the petitioner has been mentioned as “12” in the tabulation register and on that basis, the University has taken a stand that the petitioner while filling up the form to repeat the examination in two subjects, the marks secured by her in Education Psychology was mentioned as “42” and, therefore, it is the petitioner, who has forged the said mark to be “42” instead of “12”.

On a query from the Court, Mr. Sahu submits that the tabulation register is prepared on the basis of mark foils, which are, in turn, prepared by extracting the marks from the answer scripts of the examinees.

It, therefore, transpires that the basis of preparation of tabulation register is the mark foils and the primary documents, i.e., the answer scripts as per the decision of the Syndicate of the University have already been destroyed after one year from the date of publication of the result. However, this fact is disputed by Mr. Swain, who submits that this Court passed an interim order on 9.12.1999 for production of the answer scripts in Paper – II (Education Psychology), but no application has been filed by the University for modifying the same even though an affidavit was filed on 31.10.2000. According to Mr. Swain, therefore, an adverse inference should be drawn against the University.

This fact will be considered while disposing of the writ petition.

Since now it appears that the tabulation register has been prepared on the basis of mark foil and there is no decision taken by the competent authority of the University for destruction of such mark foil, Mr. Sahu is directed to produce the mark foil of Paper – II (Education Psychology) in which the mark of the petitioner was entered.

Xx

xx

xx”

Subsequent to the said order, an additional affidavit was filed by the University authorities on 03.11.2008 reiterating the averments made in the counter affidavit and, inter-alia, stating

that the tabulation register, which is a statutory register maintained by the University to preserve the marks awarded to the candidates in different examinations is being prepared by the University on the basis of the marks awarded in the answer scripts and transferred to the mark foils on due verification by the concerned tabulator. Two tabulators are being appointed every year for preparation of two tabulation registers for keeping one register in the confidential section and the other for issuance of mark sheets to the candidates which is kept in the examination – general section. In view of the aforesaid meticulous procedure followed by the University at the time of transferring the marks from the mark sheet to the mark foil and from the mark foil to the tabulation register, there is no chance of any mistake in respect of entering marks in the tabulation register which are the only statutory documents and carries presumption of correctness. With regard to the mark foils, it has been stated that there is no occasion to keep the mark foils preserved in the University and practically it is not possible to preserve all the mark foils in respect of all the candidates subject-wise. In the event of any dispute with regard to awarding of marks, the marks indicated in the tabulation register will prevail over all the documents and authenticity of the tabulation register cannot be doubted. With regard to production of mark foils, it was stated

that after due search, it was found that since the examination in question was of the year 1996, the mark foils being old records have been completely damaged and destroyed by white ants and are not available in the University to be produced before this Court.

4. The moot question, therefore, in the present case, is whether the tabulation registers maintained by the University will prevail over mark sheet which is also issued by the University, when a difference in the marks awarded in respect of one subject is found between the said two documents. The allegation that the mark in Paper – II Education Psychology, as indicated in the mark sheet, which was supplied to the petitioner, has been interpolated as “42”, though originally it was “12” cannot be accepted just because the tabulation register indicates the said marks to be “12”. From a bare look at the mark sheet, which has been annexed as Annexure – 2 to the writ petition, it would be seen that with regard to Education Psychology, the figure “4” appearing in the marks mentioned as “42” and the figures “4” as appearing twice in the marks allotted in respect of practical tests in Method Subject look completely alike and the figure “42” which is alleged to be tampered to the necked eye appears to be written by the same person who has entered the other marks. The mark - sheet issued by the University under the signature of the

authority of the University is also an official document and a presumption of correctness can be attached. Since the mark foils are not available nor the original answer scripts are available, from the documents produced before this Court, the plea taken by the University cannot be accepted.

Further, had the total marks secured by the petitioner in the B. Ed. Examination, 1996 been added and the aggregate marks secured been mentioned in the mark sheet, the alleged tampering of marks would have been easily detected. But, for the negligence of the University, in the mark sheet under Annexure – 2, the marks secured by the petitioner has not been added and the aggregate marks secured by her has not been mentioned.

5. In view of the above, the petitioner having appeared in two of the back papers where she secured less than the pass marks in B. Ed. Examination, 1996, the result of the petitioner should be declared.

6. With regard to the second relief claimed by the petitioner to direct the opp. parties 1 and 2 to return her original mark sheet of B.A. examination, C.L.C. and original mark sheet of B.A. Ist Examination which, according to the petitioner, were submitted before the University authorities at the time of scrutiny of documents for issuance of admit card, the said

averments having been denied by the University at paragraph-10 of its counter affidavit, wherein it has been stated that except the mark sheet of B.Ed. examination, 1996, no other documents were produced by the petitioner, this Court is unable to issue such a direction to the University authorities as the facts are disputed.

7. The writ petition is, therefore, disposed of directing the opposite parties – University to declare the result of the petitioner in respect of two back papers in which she appeared in the subsequent examinations in the year 1998 and issue her a comprehensive mark sheet showing the marks secured by her in all the papers in the B. Ed. Examination including two papers in which she appeared in the year 1998. If the petitioner has become successful, she should be declared to have passed the said B. Ed. Examination. This shall be done within a period of three weeks from the date of communication of this Judgment. There shall be no order as to cost.

.....
M.M. Das, J.

Orissa High Court, Cuttack.
August 26th , 2010/Biswal.