

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9988 OF 2022

(An application under Articles 226 and 227 of the Constitution of India)

Yogesh Kumar Chand ... Petitioner

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr. P.K.Bhuyan,
Advocate

-versus-

For Opposite Party No.1 : Mr.P.K.Panda, S.C.
(S & M E Deptt.)

For Opposite Party No.2 : Mr.P.K.Rath, Advocate

For Opposite Party No.3 : Mr.R.C.Jena, Advocate

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
21.10.2022.

Sashikanta Mishra,J. The Petitioner was a student of +2
Science in Siddheswar College/Higher Secondary

School, Amarda Road in the district of Balasore. He appeared as a regular student in 2018 in the +2 Annual Examination, but failed in three subjects namely, Chemistry, Botany and Mathematics. He appeared as an Ex-regular student in the next year i.e. 2019, but again failed in two subjects namely, Physics and Chemistry. He thereafter appeared in the Annual Examination in 2020 as a next regular student, but failed in Physics and Chemistry. The Petitioner appeared in the Annual Examination yet again in 2021 as an Ex-regular student and passed as a compartmental candidate. He was issued with mark sheet by the Council of Higher Secondary Education, Odisha (Council) showing him as placed in Compartmental Division. He applied for the +2 Science pass certificate before the Council after depositing the necessary fees, but the same was not issued. This is the grievance of the Petitioner in the present Writ Petition, which he has filed seeking the following reliefs:-

“It is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to admit the writ petition and issue Rule Nisi calling upon the Opposite Parties to show cause as to why the +2 Sc. Provisional as well as original pass certificate shall not be issued by the council (Opposite Party No.2) as quick as possible or within a time frame fixed by this Hon’ble Court.

And/or as to why the council opp. party no.2 shall not be held responsible for any loss of career due to non-issue of the provisional pass certificate of the petitioner.”

3. A counter affidavit has been filed on behalf of the Council refuting the averments made in the Writ Petition and the claim of the Petitioner. It is stated that the Petitioner having failed in the annual examination, 2020 was allowed to appear as an Ex-regular candidate in Chemistry and MIL (Odia). Referring to Regulation 120 of the Odisha Higher Secondary Education Regulations, 1982 (for short “Regulations”), it is stated that the Petitioner had passed in Physics and Chemistry on piecemeal basis, which is not permissible under the said Regulations, which require that he should pass in all the failed subjects at a time.

4. Heard Mr. P.K.Bhuyan, learned counsel for the Petitioner, Mr. P.K. Panda, learned Standing Counsel for the School and Mass Education Department, Mr. P.K.Rath, learned counsel appearing for the Council and Mr. R.C.Jena, learned counsel appearing on behalf of the Principal of the Secondary School in question (Opposite Party No.3).

5. It is submitted by Mr.Bhuyan that the Petitioner was allowed to appear in two subjects in the Annual Examination of 2021, i.e. in MIL (Odia) and Chemistry. He passed in the said subjects as would be evident from the mark sheet issued in his favour and was placed in the Compartmental Division. According to Mr. Bhuyan, the Council having issued the mark sheet cannot refuse to issue the pass certificate by referring to the Regulations. It is alternatively contended by Mr. Bhuyan that the law of estoppel fully applies to the present case inasmuch as having allowed the Petitioner to appear in the concerned examination, it is not open to the Council to turn around and refuse to

issue the pass certificate in his favour on technicalities.

6. Mr. P.K.Panda, learned Standing Counsel submits that the Government has no role whatsoever to play in the matter as the council is the appropriate authority to deal with the grievance, if any, of the Petitioner.

7. Mr. R.C.Jena, learned counsel appearing for the Higher Secondary School also submits accordingly.

8. Mr. P.K.Rath, learned counsel appearing for the answering opposite party namely, Opposite Party No.2 has taken the Court to Regulation 120 of the Regulations to contend that the Petitioner having passed in the failed subjects in two consecutive years but not in the same year, cannot be issued with the pass certificate. It is further argued that the council cannot issue a certificate in favour of the Petitioner as the same would be entirely contrary to the Regulations.

9. The facts of the case are not disputed. The Petitioner had appeared in the +2 Science Examination as a regular student in the year 2018, but failed in three subjects. Having appeared as a Ex-regular student in the next year, i.e. 2019 he passed in all subjects except Physics and Chemistry. In the next year he failed in Chemistry, but passed in Physics. Ultimately in 2021, he appeared as an Ex-regular student in two subjects namely, MIL (Odia) and Chemistry, both of which he passed. Firstly, it is not understood as to why the Petitioner appeared in the MIL (Odia) Examination in which he had passed in the Annual Examination of 2021 securing 58 marks. Be that as it may, it is evident that out of two subjects in which he had failed in 2019, he passed in Physics in the year 2020, but failed in Chemistry. Ultimately he passed in Chemistry in 2021.

At this stage, it would be apposite to refer to the Regulations. Regulation 120 reads as follows:

“120. If a candidate fails in one or more subjects in the Higher Secondary Examination but secures pass marks in the

aggregate, he shall be exempted, on application, from appearing again the subject or group of subjects in which he passed, and the order of exemption shall remain valid for the next two consecutive examinations conducted by the Council, following the examination in which he originally failed.

Provided (i) that he shall have to clear all the failed subjects at a time; and (ii) that he shall not be placed in any division.”

10. A bare reading of the afore quoted provision makes it clear that a candidate is required to clear all the failed subjects at a time. Therefore, there is considerable force in the submission of Mr. Rath that the Petitioner could not have appeared in the Annual Examination of 2021 in one of the failed subjects only.

11. While it is true that the Regulation as above debars a candidate from making an attempt to pass in failed subjects on the piecemeal basis yet, fact remains that he was allowed by the Council to appear in the said examination and was also issued with mark sheet. Obviously, the stage of invoking the provision of Regulation 120 is at the time of filling up the form by a

candidate seeking to appear in the examination in question. It is not known nor anything is cited as a reason by the Council as to how the Petitioner could be permitted to sit in the Annual Examination of 2021 and that too, for a subject in which he had already passed in 2019 as also for Chemistry even though it was only one of the subjects in which he had failed.

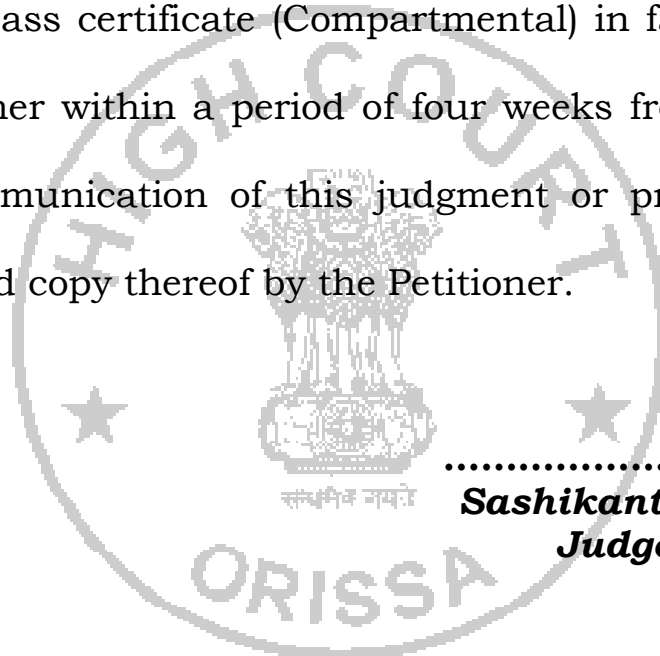
12. In view of the facts as above, this Court finds force in the argument of learned counsel for the Petitioner that the law of estoppel would have application. In the case of **Sanatan Gauda v. Berhampur University and others**; reported in AIR 1990 SC 1075, the Apex Court, dealing with a case of admission of a student in pre-law and intermediate law examinations, held that the University was not justified in refusing to declare the appellant's result of the said examinations after having permitted him to appear in the said examinations. It was held that the University is estopped from refusing to declare the results of the examinations. It was also held that if

there was any irregularity in the admission of the appellant for the Law course, the University authorities ought to have scrutinized the position before permitting him to take the examination, but not having done so, it cannot refuse to publish the results. In another case namely, **Reeta v. 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 examination after having declared them to be passed, it was held that the Petitioner could be protected by the principle of promissory estoppel.

13. The facts of the case are more or less similar to the cases referred above. Having regard to the findings of this Court that the authorities having allowed the Petitioner to appear in the Annual Examination, 2021 and having issued mark sheet in his favour showing him as passed and placed in the compartmental division notwithstanding the Regulation 120, are

estopped to turn round at this belated stage and refuse to issue a pass certificate in his favour, more so by referring to the said Regulation.

14. For the foregoing reasons therefore, the Writ Petition is allowed. The Council (Opposite Party No.2) is directed to issue the +2 Science Annual Examination 2021 pass certificate (Compartmental) in favour of the Petitioner within a period of four weeks from the date of communication of this judgment or production of certified copy thereof by the Petitioner.



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Sashikanta Mishra,
Judge

Ashok Kumar Behera





