

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13380 of 2021

Nirupama Mahanta and others ***Petitioners***
Mr. Karunakar Rath, Advocate

-versus-

Secretary, Council of Higher ***Opposite Parties***
Secondary Education, Odisha and
others

Mr. S.B.Jena, Advocate.

CORAM:
JUSTICE A.K. MOHAPATRA

ORDER

12.01.2022

Order No.

12. 1. This matter is taken up through Video Conferencing mode.
2. The present writ application has been filed by three petitioners with a prayer for quashing the order dated 31st Mach, 2021 passed by the Controller of Examination, Council of Higher Secondary Education, Odisha, Opposite Party No.2 whereby the prayer of the petitioners to change of stream has been rejected by the Controller of Examination, Council of Higher Secondary Education, Odisha for Annual CHSE Examination, 2021.
3. The Petitioner Nos. 1 and 2 were prosecuting their study in Arts stream and Petitioner No.3 has been prosecuting his study in Science stream. Initially after taking admission in the respective stream stated hereinabove, the Petitioners decided to change their stream. Accordingly the Petitioner Nos. 1 & 2 decided to change their stream from Science to Arts and Petitioner No.3 from Arts to Science. Since their such prayer for change of stream was not considered by the authority, the petitioner in the earlier round of litigation approached this Court by filing W.P.(C) No.8809 of 2021. This Court disposed of W.P.(C) No.8809 of 2021 on 8th Mach, 2021

directing Opposite Party No.2 to consider the recommendation made by the OIC, PMU, SAMS vide Annexure-1 dated 23rd February, 2021 and pass appropriate order in accordance with law. Thereafter the recommendation dated 23rd February, 2021 under Annexure-1 was considered by the Controller of Examination, Council of Higher Secondary Education, Odisha and on 31st March, 2021 rejected the prayer of the Petitioner as the recommendation made by the OIC, PMU, SAMs was not supported by Regulation No.10791 of the Orissa Higher Secondary Act and Regulation, 1982. From a reading of the Order dated 31st March, 2021 under Annexure-3 it appears that the Opposite Party No.2 did not consider the case of the Petitioners. Apart from the principal grounds that the recommendation did not reach in time and no evidence was furnished by the Petitioners in support of their claim that they have completed two years in the subjects in which the petitioners wishes to be examined in the Annual H.S. Examination, 2021.

4. After rejection of their prayer by the Controller of Examination, Council of Higher Secondary Education, Odisha, Opposite Party No.2 by order dated 31st March, 2021 the petitioners filed the present writ application challenging the said order. At the outset this Court is of the prima facie view the challenge to order dated 31st March, 2021 has become infructuous with passage of time because the claim or recommendation involved in that case was for the Annual Examination of the year 2021.

5. At this juncture, learned counsel for the Petitioners submits that the case of the Petitioner Nos. 1 and 2 be considered for change of stream for the Annual Examination, 2022. He further submits that he does not press for change of stream for Petitioner No.3. So far as Petitioner Nos.1 and 2 are concerned, they have sought for change of

stream from Science to Arts.

6. Mr.S.B.Jena, learned counsel for the Opposite Parties submits that in the case of the Petitioner Nos 1 and 2 can be considered by the Council keeping in view the fact that Arts and Commerce does not involve any practical class and one main ground of rejection that the Petitioners had to complete two years of study in the branch to which he/she is seeking transfer must have been completed in the meanwhile.

7. In view of the aforesaid facts and circumstances and keeping in view the future of the students involved in the case, this Court directs the Controller of Examination, Opposite Party No.2 to consider the case of the Petitioner Nos. 1 and 2 for change of stream as recommended under Annexure-2 dated 23rd February, 2021 for the Annual Higher Secondary Examination of the year 2022, if there is no other legal impediment. Let a certified copy of this order be produced before the opposite Party No.2 by the Petitioners within one week whereafter the Opposite Party No.2 shall take a decision in the matter and if the Opposite Party No.2 comes to a conclusion that the Petitioner deserves to be considered in accordance with law then they may be allowed to appear the Annual /CHSE Examination in the stream in which they have sought for to be examined in this writ application.

8. With the aforesaid observation the writ application stands disposed of.

9. As the restrictions due to resurgence of COVID -19 situation are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned Advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th

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March, 2020, modified by Court's Notice No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(A.K. Mohapatra)
Judge

RKS

