

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18022 of 2016

Byomakesh Nayak

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Petitioner

Mr.Biren Sankar Tripathy, Advocate

-versus-

Utkal University and others

....

Opposite Parties

Mr.B.K.Dash, Advocate

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER

Order No.

DATE OF HEARING : 16.12.2022 DATE OF ORDER 23.12.2022

- 09.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard Mr.Biren Shankar Tripathy, learned counsel for the Petitioner and Mr.B.K.Dash, learned counsel appearing for the Opposite Parties. Perused the pleadings of the respective parties and the documents placed before this Court for perusal.
 3. The present writ application has been filed by the Petitioner with a prayer to permit the Petitioner to appear in the Final Semester back papers as regular candidate.
 4. The factual background of the Petitioner's case in brief is that the Petitioner having successfully completed Bachelor's degree course from Gujarat National Law University in the year 2010 was interested to take admission in the LL.M. courses. Accordingly he took admission in LL.M. course at the P.G. Department of Law, Utkal University, Vani Vihar on 01.12.2010 bearing Roll

No.14015V103004 for the Academic Session May 2010 to April 2012. It has also been stated in the writ application that the Petitioner had secured highest marks in the 1st year of the LL.M. examination which includes 1st and 2nd semester examination for which he was conferred with prestigious “Bijay Kishore Roy Memorial Award” by the University.

5. Thereafter the Petitioner was continuing his study and intended to appear in the 4th Semester back paper in the examination. However, the Petitioner was prevented by the Opposite Parties to fill up the forms and he was verbally informed that he does not have the required percentage of attendance to appear in the 4th semester examination. It is contended by the learned counsel for the Petitioner that the Petitioner stood first in the Orissa Judicial Service 2011 and on being selected he has joined in the said service immediately. It is further contended that there was a delay in the academic calendar so far as Utkal University is concerned at the relevant point of time. He further contends that the Petitioner appeared in the 3rd semester examination as a regular candidate conducted by the University in the month of January, 2012 and thereafter the Petitioner was selected for the Orissa Judicial Service on 09.01.2012. Thereafter he was not allowed to appear in the final 4th Semester examination by the University and the University did not consider his request to allow him to appear in the final as well semester examination conducted by the University. Further, it is also submitted by the learned counsel for the Petitioner that the Petitioner was also not allowed to appear in the awaiting examination from the Orissa High Court. Although the Petitioner had applied for permission from the Orissa High Court to appear in the final semester examination, this Court granted such permission which was communicated by Head of Department of Law

vide Letter no.6725 dated 16.08.2012 allowing the Petitioner was allowed to appear in the 3rd and 4th semesters examination.

6. After obtaining permission from the Orissa High Court, the Petitioner appeared in the 3rd Semester back paper examination which took place between 30.01.2013 to 07.02.2013 and by that time the Petitioner had already joined in the Orissa Judicial Service. After successful completion of 3rd semester, the Petitioner filled up the forms of 4th Semester examination on 14.07.2013. Despite filling up of such form to sit in the examination, the University authority did not allow the Petitioner to appear in the examination as the Petitioner was not having the requisite attendance. Although the Petitioner approached various authorities of the University with a request to permit him to appear in the 3rd and 4th Semester examination, such request was turned down as the Petitioner does not have the required percentage of attendance to appear in the examination. Learned counsel for the Petitioner at this juncture submits that the Petitioner is a bright student having brilliant career in law and in the aforesaid context, learned counsel for the Petitioner submits that the Petitioner not only stood first in the 1st and 2nd semester examination, he also stood first in the Orissa Judicial Service recruitment examination conducted by the Orissa Public Service Commission.

7. Mr.Tripathy, learned counsel for the Petitioner urges before this Court that because of arbitrary and discriminatory approach of the Opposite Party authority the bright future of a brilliant student will be affected seriously. Further it was submitted that because of the highhanded and arbitrary attitude of the Opposite Parties the brilliant career of the Petitioner is likely to be spoiled and he will suffer immensely and therefore he may be allowed to appear in the examination by taking into consideration the development that took

place while the Petitioner was attending classes in P.G. law courses. It is further submitted by the learned counsel for the Petitioner that the Petitioner also suffered due to delay in timely conclusion of academic session by the University.

8. It is relevant to mention here that there was admittedly a delay in concluding the academic session in respect of LL.M. course at the relevant point of time. In the said context, learned counsel for the Petitioner submits that had the authority followed the academic calendar as was prescribed in the prospectus, then the Petitioner would not have suffered. The Petitioner has suffered only because of the failure on the part of the University authority in promptly seeking permission from the authority which was adopted by the University. Had the academic session been concluded in time, the Petitioner would have appeared in the 4th semester i.e. between September 2011 to January, 2022 which is much prior to Petitioner was selected and appointed in Judicial Service. Thereafter, it was argued that the Petitioner suffered for none of his negligence and laches. The laches and negligence on the part of the University for which the Petitioner has been made to suffer is entirely attributable to the University.

9. Per contra the Opposite Party university has filed a Counter Affidavit wherein they have taken a number of grounds as to why that the Petitioner was not allowed and principal ground being as he was not having the requisite percentage of attendance and the same was reported to the University by none other than the Principal of the college in which the petitioner was admitted in the LL.M. courses.

10. Mr.B.K.Dash, learned counsel appearing for the University further submitted that the University has not allowed the Petitioner to appear in 3rd and 4th semester by following the academic regulation and the Rules in this regard that is being followed by the University.

He further contended that the academic regulation and other relevant Rules are statutory in nature and in the absence of any specific provision to condone the shortage in the percentage of attendance, the University authority could not assist the Petitioner in any manner. Accordingly, it is submitted by the learned counsel appearing for the University that no fault can be found in the decision of the University in not allowing the Petitioner to appear in the 3rd and 4th Semester examination.

11. In reply to the submissions of the learned counsel appearing for the University, learned counsel for the Petitioner submitted that Syndicate and the Academic Council of the University is the supreme body of the University and vested with power to frame Regulations and to take decision on all academic issues. He further submits that in the present case, the issue was never referred to Syndicate and Academic Council to take a decision in the matter. In the present case the decision was taken by the Head of P.G. department of Law, Utkal University. This Court on perusal of the Rejoinder Affidavit filed by the learned counsel for the Petitioner observes that in Paragraphs 15 and 17 of the Rejoinder Affidavit, a specific stand has been taken that a final decision in the shape of not allowing the Petitioner to appear in the 4th Semester examination has been taken by the HOD P.G. department and the same was not referred to Syndicate of the University or Academic Council of the University, which is the supreme body so far as the academic issues are concerned. Further, the learned counsel for the Petitioner also relied upon the judgment of the Hon'ble Supreme Court in that regard. However, this Court is of the considered view that the proposition of law is well settled and therefore, there is no necessity to discuss such judgments relied upon by the learned counsel for the Petitioner at this stage.

12. Having heard learned counsel for the parties and upon careful consideration of the background of the present case, this Court is of the considered view that the matter should have been referred to the apex academic body of the University i.e., Syndicate of the University and Academic Council of the University to take a decision in the matter keeping in view the peculiar facts and circumstances of the present case, particularly taking into consideration the fact that the Petitioner is a brilliant student and on the basis of his performance in the University examination itself the University awarded him Bijay Kishore Roy Memorial award. Therefore, this Court deems it proper that the matter should have been considered by the Syndicate/Academic Council of the University keeping in view the factual background of the present case.

13. Accordingly, the Petitioner is directed to approach the Registrar, Utkal University Vani Vihar along with certified copy of this order within two weeks from today. In the event the Petitioner approaches the Opposite Party no.2, the Opposite Party No.2 shall do well to place the entire record of the Petitioner before the Syndicate/Academic Council of the Opposite Party University. The Opposite Party No.1-University is directed to take a decision in the matter within a period of eight weeks from the date of presentation of record before the competent authority by the Registrar, Opposite Party No.2. The matter shall be positively placed before the Syndicate/Academic Council in its next meeting by Opposite Party No.2. This Court hopes and expects that the Academic Council/Syndicate of the University shall take a decision keeping in view the peculiar facts and circumstances of the present case and considering the otherwise brilliant career of the Petitioner. The decision so taken shall be communicated to the Petitioner within two

weeks thereafter.

14. With the aforesaid observation and direction, the writ application stands disposed of.

15. Issue urgent certified copy of this order as per Rules.

RKS

(A.K. Mohapatra)
Judge

