

**A.F.R.**

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 649 of 2015

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

*Bibhuti Bhusan Barik* .... *Petitioner(s)*

*-versus-*

*State of Orissa* .... *Opp. Party(s)*

*Advocates appeared in the case:*

*For Petitioner(s)* : *Mr. Tanmay Mishra, Adv.*  
*Mr. S. Sourav, Adv.*

*-versus-*

*For Opp. Party(s)* : *Mr. Sanjeev Udgata, Adv.*  
*(for O.Ps.2 & 4)*

**CORAM:**

**DR. JUSTICE S.K. PANIGRAHI**

**DATE OF HEARING:-22.02.2024**

**DATE OF JUDGMENT:-28.03.2024**

*Dr. S.K. Panigrahi, J.*

1. The Writ Petition has been filed seeking a direction to the Opposite Parties to pay a monetary compensation to the petitioner whose career and further prospect of studies has been marred by nine years due to a totally irresponsible conduct of the affairs of the University in the matter of conduct of the examination, checking/marking of the candidate answer sheets therein, and late publication of his result.

## I. CASE OF THE PROSECUTION

2. Succinctly put, the facts of the case are as follows:

- (i) The petitioner fulfilled all eligibility criteria for appearing in the +3 commerce course as a private candidate of Sambalpur University. The petitioner appeared in the +3 Commerce examination in the year 1999 through Panchayat College, Bargarh, the centre held for the examination under the University Roll No. 04599PCP004 and Registration number 916/97.
- (ii) The petitioner took the first exam but failed in English with 25 out of 100 marks, falling short of the passing score of 30. Further, despite attending, he was marked absent for the Commercial Law paper. Ergo, the petitioner retook the English paper and simultaneously sat for the final +3 Commerce Pass Examination. Despite appearing, he was marked absent for the English retake. He was shown to have scored 23 in Commercial Law, where he was previously marked absent. His final exam result was withheld due to his 'absentee' status in the English retake.
- (iii) The petitioner retook the English paper of the first exam, but was again marked absent on the result sheet. Unexpectedly, he was also marked absent in the Core-III papers, Accountancy and Commercial Law, despite previously scoring 38 and 23 respectively and passing these papers.
- (iv) Over the course of a decade, from 2001 to 2011, the petitioner persistently approached the University authorities, highlighting

inexplicable discrepancies in his mark sheets. Despite numerous appeals to the University for elucidation and reassessment of his academic record, the petitioner's efforts remained fruitless.

- (v) After numerous attempts by the petitioner, the Principal-in-Charge of Trust Fund Degree College, Bargarh, wrote to Sambalpur University affirming the petitioner's presence at the exam. He requested the Controller-of-Exam to verify the petitioner's result and enclosed an attendance sheet with the petitioner's signature. Despite being marked absent, the petitioner had indeed attended the exam.
- (vi) Following the Principal's letter, a result sheet was published on 22.12.2011. It showed that the petitioner, previously marked absent, had attended the 2001 English Back paper examination but had scored only 02 marks, thus failing the exam which again was another variant of the result of the English Exam.
- (vii) On 02.04 2012, the petitioner submitted a representation to the Vice-Chancellor of Sambalpur University. Later, on 02.06.2012, he filed Section 6 application under the RTI Act, 2005 requesting to supply his marks in English paper. The RTI response included a copy of a letter from the examination controller dated 15.06.2012, and a notification of the petitioner's pass result, reportedly published on 17.05.2012. It was noted that the petitioner's result was declared as failed due to a missing mark entry from 1999.

(viii) In the end, vide a back date notification dated 17.05.2012, the University released the petitioner's results, indicating that he had successfully passed all the papers of the initial examination, where he was previously marked as either absent or failed. Given that the final examination result was previously withheld due to the non-clearance of the first examination, it was subsequently released, affirming that the petitioner had successfully completed and passed the +3 Commerce course. Being aggrieved by the lackadaisical approach of the University Authority, the Petitioner seeks compensation from the University for losing some valuable years of his life.

## II. SUBMISSIONS:

### A. On behalf of the Petitioner:

3. The counsel appearing on behalf of the petitioner urged the following submissions:
  - (i). The University has failed and/or neglected to publish the correct result of the petitioner, and as a result where of a serious injustice has been done to his case.
  - (ii). It is because of the acts of omission and commission on the part of the Opposite party University that the writ petitioner has suffered immense damages. The professional life of the petitioner has been made to suffer harshly at the hands of the authorities of the university by sheer negligence of the authorities and the petitioner

- even after several attempts in all these years could not get the authorities to correct it until he filed application under the RTI Act.
- (iii). The sheer neglect of the University officials led the petitioner to deprive of getting his degree in +3 Commerce and hence could not get employment anywhere. In today's competitive world, it is very difficult to get an employment and get a steady source of income and the petitioner without a job suffered harshly and has led a miserable life with no source of income.
- (iv). The University must be held responsible for the negligent acts of its officers and it must repair the damage done to the citizens by its officers for violating their indefeasible fundamental right. It is well settled in law that the award of compensation against the State is an appropriate and effective remedy for redressal of an established infringement of a fundamental right under Article 21, by the negligence of the state. In the present case the violation of Article 21 of the present petitioner is patent and incontrovertible. Due to the callous and negligent way that the opposite party authorities dealt with the mark sheet of the petitioner, he has lost the opportunity to grab those aspects of life which go on to make a man's life meaningful, complete and worth living, as he could not obtain the degree which he was entitled to and hence could not further pursue his career.
- (v). The petitioner was failed for no fault of his but the rest of the students of his batch, who deserved to pass like the petitioner,

passed the examination, got their respective degree and pursued their career. The petitioner wanted to do further studies but could not do so due to the callous manner in which the University authorities dealt with his case. The petitioner would have been employed for many years had it not been for such wrongful act of the opp. parties.

- (vi). That the act of the Opposite party University in not publishing the correct result has led to violation of Article 21 of the Constitution of India. The life and career of the petitioner has been severely affected owing to the callous and recalcitrant acts on the part of the authorities

**B. On behalf of the Opposite Parties**

4. *Per Contra*, the counsel appearing on behalf of the Opposite Party Nos.2 and 4 urged the following submissions:

- (i). The petitioner had not put any effort in following up the matter until 2012. If he was a sincere student he could have followed with the University Authority.
- (ii). The result of the petitioner was not declared to have passed in 2002, but the petitioner did not take any step to obtain his marksheet or making any representation to the university about the defect in the marksheet.
- (iii). The situation in which the petitioner was put in, was neither deliberate nor on account of any negligence on the part of the University but due to advertence. Though there has been inadvertent

error in preparing his marksheet, he too was negligent in representing his case before the university timely.

- (iv). The University conducts examination of thousands of students and publishes its results in due time. So, the case of the petitioner is a rare outlier of the University modus operandi. Hence, it cannot be called a negligence on the part of the University.

### III. COURT'S ANALYSIS AND REASONS:

5. Having heard learned counsel for the parties, this Court finds no difficulty in coming to a conclusion that the action of the Controller of Examination of the University and its officials/ staffs whosoever is there, in *firstly*, recording an incorrect/wrong marks in the result of the petitioner and showing him 'Fail' , and *second*, marking him absent in the exams in which he diligently appeared, is a totally irresponsible kind of act which has had an adverse consequence upon the career and future prospect of petitioner.
6. Universities hold a significant responsibility towards their students, particularly in the efficient administration of examinations and the timely publication of results. These processes are fundamental to the academic journey of students and any lapse can have serious implications on their academic progress, career prospects, and overall well-being.
7. Efficient examination conduction ensures that students are assessed in a fair and standardized manner. It involves proper scheduling, ensuring the availability of necessary resources, and maintaining an environment

conducive to fair testing. Any discrepancies or inefficiencies can lead to undue stress and may not accurately reflect a student's capabilities.

8. Timely result publication is equally important. Delays in result declaration can cause anxiety and uncertainty among students. It can also hinder their ability to make informed decisions about their future, such as applying for higher studies or jobs.
9. If universities fail in these responsibilities, it can be argued that they should provide compensation to the affected students. This could be in the form of financial compensation, course credits, or other measures that acknowledge and rectify the inconvenience caused. Such a provision not only serves as a remedial measure but also underscores the accountability of educational institutions.
10. However, it's important to note that while compensation can provide some relief, it does not absolve universities of their responsibilities. Universities must strive to prevent such lapses in the first place through robust systems, regular audits, and a commitment to student welfare.
11. In *University of Kerala v. Sandhya P. Pai*,<sup>1</sup> the Kerala High Court has held that serious errors that negatively impact the lives of diligent students cannot be ignored. The relevant excerpts of the judgment is produced hereinbelow:

*“The University states that it has to determine the destiny of many thousand students and within a compressed time, and that the court should be appreciative of the practical difficulties in running and*

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<sup>1</sup> AIR 1991 KER 396



*managing any massive human organisation. While appreciating the massiveness of the works that have to be done and even the time limit within which they have to be done and with perfection, we cannot, on that ground, exonerate the University of its fundamental obligation to complete the valuation of the merit of a student within time. Difficulties do not permit an authority to act in derogation of its duty such as the duty to observe principles of natural justice, (vide R. v. Havering Justice, (1974) 3 All ER 484 at 488). If men and material are inadequate, it is for the University to address itself on those questions and to find out appropriate and adequate remedies. It is not for the court to give an advice or guideline in such matters. The Universities were not born yesterday. The hallowed institutions carry with them the rich and ripe experiences of bygone ages, and of a rare variety of human species the cream of the intelligential. New situations-require modulations. That is precisely the duty of those with whom the functions of a University are entrusted by a solemn legislative enactment. A University is not yet another factory where production by number is fixed as the sole standard for payment of wages. The University cannot compromise with quality. The followers of Darwin cannot reconcile with anything imprecise in their life, even in the course of an innocent narrative in an informal meeting. (Darwin woke up from his sleep, to tell his lively awake friends in a dinner party, about an inaccurate statement which had crept in in an earlier narrative he had made). We will not be justified in winking our eyes, at grievous lapses when they mar precious lives of a studious generation of students. If additional posts are required to cope up with the increased volume of work, it is the duty of the State to find out the resources needed for the same, and to resort to sophisticated and scientific methods which would destroy the tedium in the work and*

*facilitate precision and speed simultaneously. The delay of about 8 months in the despatch of the revaluation marks is murderous in character in relation to the educational life of a young student. Every second of the victim of the erroneous valuation is a lynching experience for the student. No court will permit such cruelties to pass unnoticed. (See the stern action taken by the Supreme Court in Board of High School and Intermediate Education, U. P. v. Chitra Srivastava, AIR 1970 SC 1039)"*

12. Similarly, Patna High Court in *Manoj Kumar and Another vs. The State of Bihar*<sup>2</sup> directed the Bihar School Examination Board to pay a monetary compensation of Rs 2 Lakh to a girl who was wrongly declared 'fail' in a paper of the Secondary School Examination, 2017 (Annual) conducted by the Bihar School Examination Board. The Court held as follows:

*"In the totality of the facts and circumstances of the case, considering the fact that the petitioner no. 2 being a girl student who had in fact passed her matriculation examination in 1st division but because of the irresponsible act of the Board and its officials, she has suffered in her life and has lost her valuable time and studies which cannot be otherwise compensated, this Court directs the Board to pay a sum of Rs.2 lakhs to the petitioner no. 2 as compensation and Rs. 25,000/- as cost of litigation."*

13. Given the entirety of the situation and the fact that the petitioner has endured significant hardship and lost ten years of his professional life, a loss that cannot be compensated in any other way, this Court orders the

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<sup>2</sup> Civil Writ Jurisdiction Case No.7185 of 2019 (Patna HC)

University to pay the Petitioner a sum of Rs.5.00 lakhs as compensation.  
This amount shall be paid to the Petitioner within three months from  
the date of presentation of this order before the University Authority.

14. This Writ Petition is disposed of being allowed.

*( Dr. S.K. Panigrahi )*  
*Judge*

*Orissa High Court, Cuttack,*  
*Dated the 28<sup>th</sup> March, 2024/*

