

ITEM NO.5 Court 5 (Video Conferencing) SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 981/2020

KUMAR YASH Petitioner(s)

VERSUS

MINISTRY OF HUMAN RESOURCE DEVELOPMENT & ANR. Respondent(s)

(FOR ADMISSION

IA No. 91334/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

W.P.(C) No. 984/2020 (X)

IA No. 90026/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 1031/2020 (X)

IA No. 95486/2020 - APPLICATION FOR PERMISSION
IA No. 95495/2020 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 97593/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 95500/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 95493/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 110169/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 89219/2020 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 97591/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 95484/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 108482/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

W.P.(C) No. 1151/2020 (X)

IA No. 108828/2020 - APPLICATION FOR PERMISSION
IA No. 101290/2020 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 17-12-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) Mr. J. N. Singh, Adv.
Mr. Saurabh Mishra, AOR
Mr. Onkar Singh, Adv.
Mr. Arun Verma, Adv.

Mr. Rishi Malhotra, AOR

Mr. J. Sai Deepak Iyer, Adv.

Ms. Vrinda Pathak, Adv.

Mr. Preshit Vilas Surshe, AOR

Mr. Shoeb Alam, Adv.

Mr. Talha Abdul Rahman, AOR

Mr. Pawan Bhushan, Adv.

Mr. Udit Atul Kokanthankar, Adv.

Mr. Mohd. Shaz Khan, Adv.

Mr. Gaurav Sharma, AOR

Mr. Dhawal Mohan, Adv.

Mr. Prateek Bhatia, Adv.

For Respondent(s) Mr. S. Rajappa, AOR

Mr. R. Gowrishankar, Adv.

Ms. Madhvi Divan, ASG

Mr. Gurmeet Singh Makker, AOR

Mr. Ayush Puri, Adv.

Ms. Vimla Sinha, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Writ Petition (C) No. 981/2020

The petition proceeds on the assertion that the assessment of marks of the petitioner in theory papers ought to have been done in terms of clause(s) (b) and (d) of paragraph 5 of Notification dated 10.07.2020. However, during the course of arguments, the petitioner is relying on clause 5(a) of the same notification.

After hearing counsel for the parties, we have no hesitation in observing that the petitioner's case is governed by clause 5(d) of the Notification, being a case of appearing in

examination conducted by Respondent No.2 - National Institute of Open Schooling (for short, NIOS) for the first time.

The respondent No.2, NIOS, had constituted a committee to consider the case of the petitioner, and after assessing the material, including the dispensation specified in clause 5(d) of the notification, issued fresh mark-sheet indicating the petitioner as passed and has been awarded 58 marks in Mathematics, 61 marks each in Physics and Chemistry. Therefore, we decline to interfere in this writ petition being devoid of merits.

Hence, the writ petition is dismissed and pending applications are disposed of.

Writ Petition (C) No.984/2020

We have heard learned counsel for the parties.

We are in agreement with the stand taken by Respondent No.1 - National Institute of Open Schooling (for short, NIOS) as reinforced from the break-up of theory marks furnished to us, which clearly reveals that the assessment has been done on the basis of clause 5(d) of Notification dated 10.07.2020.

The grievance of the petitioner that subject average of past performance of passed learners of last three public examinations of NIOS has wrongly been reckoned, does not commend to us. We find no error in the calculation done by respondent No.1-NIOS, in the fact situation of the present case.

Hence, this writ petition is dismissed and pending applications are disposed of.

Writ Petition (C) No.1031/2020

Heard counsel for the parties.

Even in this writ petition, the case of the petitioner falls under category 5(d) of the Notification dated 10.07.2020.

As observed in other cases, we find no error in the approach of respondent No.1, NIOS, in having reckoned the subject average of past performance of passed learners of last three public examinations of NIOS while computing the marks allocable to the concerned first time learner whilst taking into account Tutor Marked Assignment (TMA) and/or practical marks made available to the respondents.

The break-up of the marks obtained by the petitioner herein has been furnished along with

affidavit dated 16.11.2020. We find no error in the computation furnished along with the said affidavit.

The argument of the petitioner that in clause 5(d), there is no reference to the permissibility of reckoning the subject average of past performance of passed learners of last three public examinations of NIOS, is devoid of merits. The expression used in clause 5(d) explicitly provides *"viz-a-viz performance of last three Public examination in the subjects for which the learner was registered to appear in examination which could be held in March-April 2020"*. This enables the respondent No.1-NIOS to reckon the subject average of past performance of passed learners, as there is no other way of reconciling the position and providing for an equitable and objective basis on which respondent No.1, NIOS, can allot total marks to the concerned candidates.

In our opinion, no infirmity can be attached to the decision taken by respondent No.1-NIOS and the mark-sheet made available to the petitioner regarding the examination conducted in 2020.

If the petitioner was not satisfied with the

dispensation provided under clause 5(d) of the Notification dated 10.07.2020, could have had explored the option of appearing in the concerned subjects in the 'On-demand examination' conducted by NIOS for such students to improvise their total marks in the concerned subjects. Be it noted that the scheme has been propounded as a one-time measure to ameliorate the piquant situation faced by the students due to unforeseen pandemic situation. The students have been provided with the option of accepting the dispensation under clause 5(d) or to appear in the "On-demand examination", if they desire to undergo actual evaluation of their performance instead of notional basis predicated in clause 5(d).

The petitioner in this case did appear for such examination for the subject English and had secured 78 marks. Similarly, he could have done for other subjects, if so advised.

We must note that the challenge before us is founded on the observations of this Court in the previous decision dealing with the case of students governed by clause 5(c), which has no bearing or application to the dispensation predicated in

clause 5(d) applicable in this case. For, both dispensations [i.e., under clauses 5(a) and 5(d)] are mutually exclusive, as it applies to different set of students.

Hence, this writ petition is dismissed and pending applications are disposed of.

Writ Petition (C) No.1151/2020

This writ petition has been filed by the Institute (Lotus Petal Charitable Foundation) espousing the cause of the students.

In this writ petition some of the students are covered by clause 5(d) and rest by clause 5(a) of Notification dated 10.07.2020.

As regards students covered by clause 5(d), we have no hesitation in observing as held in the other cases decided today that no fault can be found with the approach of the respondents in reckoning the subject average of past performance of passed learners of last three public examinations of NIOS while calculating the marks allocable to the concerned first time learner.

Notably, the petitioners in this case would submit that it is absolutely legitimate and permissible for the respondents to reckon the marks

on the basis of the subject average of past performance of passed learners of last three public examinations of NIOS while calculating the marks allocable to the concerned first time learner

The only additional contention is that while doing so, the NIOS ought to have reckoned the marks obtained by candidates in the past three examinations but of those who had secured equivalent marks in Tutor Marked Assignment (TMA). That is not the scheme propounded by the authorities. We do not deem it appropriate to re-write the scheme.

Despite negating the challenge of students covered under clause 5(d)-petitioners in this petition, we make it clear that if they so desire, will be free to opt for 'On-demand examination' for improving the marks allotted to them under the scheme [clause 5(d)] by the respondent-NIOS. As a result, no further deliberation at the instance of candidates covered under clause 5(d) of the Notification is necessary in this case.

As regards the claims of candidates covered under category 5(a) of the notification and exemption from paying fee, the same will be

considered after the ensuing winter vacation. In the meantime, the respondent-NIOS to furnish break-up of marks secured by the candidates (petitioners herein) covered under category 5(a). That break-up of marks be filed along with the affidavit, as done in the other cases through e-mail/on-line.

List the matter on 8th January, 2021,

(NEETU KHAJURIA)
COURT MASTER

(VIDYA NEGI)
COURT MASTER