
(2005) 08 MP CK 0100
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2824 of 2005

Abhishek Rawat

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Citation : (2006) 1 MPHT 460 : (2006) 1 MPLJ 327

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : V.K. Bhardwaj, for the Appellant; Harish Dixit, for Respondent Nos. 1 and 2 and Vivek Jain, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

As common questions are involved in all these four petitions and as the grounds raised are also similar, therefore all the four petitions are being disposed of by the common order.

Petitioners in all these four cases are students, who had appeared in class 10th [All India Senior Secondary School Examination-2005 (AISSE-05)] Examination conducted by the Central Board of Secondary Education in March, 2005 as regular students from respondent No. 3 Institute, feeling aggrieved by action of the Board of Secondary Education in not declaring their results they have filed the instant petitions. Relief claimed in all these petitions are that the Central Board of Secondary Education be directed to declare the result of the petitioners.

The facts in brief relevant for deciding the question involved in these petitions are that all the four petitioners were student of St. Paul's School, Morar, Gwalior. They were studying in the class IX in the said school during the academic session 2003-04. They appeared in the IX class examination conducted by the said school, results of which was declared in March, 2004 by the said school, all the petitioners were declared as failed in the IX class examination as per annual

report Annexure P-1 filed in each of the case. As the petitioners were declared failed by the said school, they took admission in the X class in the respondent No. 3 Institute. The case of the petitioners are that they had obtained transfer certificate from St. Paul's School, Morar and thereafter they were admitted in the X class in the respondent No. 3 school. They were permitted to appear in supplementary examination for class IX conducted by the said school. They were declared passed in the supplementary examination. Thereafter, their application forms requisite mark sheet of the supplementary examination and other particulars were forwarded by the respondent No. 3 Institute to the Regional Office of the Central Board of Secondary Education at Ajmer. The Board accepted their forms permitted them to participate in the examination, but has withheld the results. Inter alia contending that the petitioners were qualified to appear in the All India Senior Secondary School Examination, 2005, they were issued admission cards, they had appeared in the examination and their results have been withheld illegally. Petitioners want interference by this Court in the matter.

Shri V.K. Bhardwaj, learned Counsel for the petitioners taking me through the various correspondence made between the Central Board of Secondary Education, Regional Office, Ajmer as contained in Annexure P-4 and the institute in question argued that petitioners were permitted to appear in the examination after the Board was satisfied that they were regular students of Class X after being declared successful in the supplementary examination can not now withhold their results and refuse to declare the petitioners' results. Taking me through the mark-sheet issued by the earlier school namely St. Paul's School, Morar where the petitioners had studied in the class IX, Shri Bhardwaj argued that in fact as per rules, all the petitioners had passed class IX examination and authorities of St. Paul's School have illegally and incorrectly declared them as failed. Accordingly, inviting my attention to the various judgments, Shri Bhardwaj argued that action of the respondents in refusing to declare the results of the petitioners as illegal and Shri Bhardwaj submitted that once the documents pertaining to the petitioners having qualified in the Class IX examination was accepted by the Board and the Board after scrutiny of the applications had permitted the petitioners to appear in the examination, the Board can not go back and contended that petitioners are not eligible to appear in the examination. The judgment relied upon by Shri Bhardwaj are *Ashok Chand Singhvi Vs. University of Jodhpur and Others*, , *Biswanath Ghosh Vs. State of West Bengal and Others*, , *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, and judgment of this Court in the case of *Dhananjay Tiwari v. Guru Ghasiram Vishwavidhyalaya and Ors.* (1991 MPJR SN 2).

Refuting the aforesaid Shri Harish Dixit, learned Counsel representing Central Board of Secondary Education pointed out that the petitioners are not eligible to appear in the examination for class X as they had failed in the qualifying examination of Class IX, they were incorrectly given admission by the respondent No. 3 Institute. After scrutiny of papers and original mark-sheet issued by St. Paul's School, Morar, so also the transfer certificate of the

petitioners it was found that they are not eligible to appear in the class X examination. It is the case of the respondents that petitioners were incorrectly permitted to appear in the supplementary examination by the respondent No. 3 and the admission granted to them being illegal, their examination has been cancelled and their results can not be declared. A separate return is filed by respondent No. 3 represented by Shri Vivek Jain and by bringing on record various documents, Shri Jain argued that the school in question has correctly granted admission to the petitioners. In fact, the petitioners had passed class IX examination from St. Paul's School itself, but for the reasons best known to school, they were declared as fail. Taking me through Rules of admission and the syllabus as contained in Annexure R/3-1 and R/3-2, Shri Jain argued that admission granted to the petitioners being as per rules and as the school in question has forwarded all the papers to the Board and the Board after scrutiny of the papers having permitted the petitioners to appear in the examination can not now go back and contended that the admission granted to the petitioners are incorrect. It was argued by Shri Jain that in the LOC sent by the institute to the Board as contained in Annexure R/3-5 it was specifically mentioned against each of the petitioners that they have been admitted directly in class X. Accordingly, Shri Jain argued that admission of the petitioners being in accordance with Rules, respondent No. 3 has not committed illegality in the matter of withholding the results and cancelling the examination of the petitioners.

I have heard the learned Counsel for the parties and perused the records. Rules for admission formulated by the Board of Secondary Education pertaining to admission of students to a school on transfer or migration are contained in Annexure R/1-2. According to Clause 7.3 of the aforesaid Rule admission to class X in a school is open only to such of the students who have completed a regular course of study for class IX and have passed class IX examination from an institute affiliated to the Central Board of School Education. Clause 6.4 of the aforesaid Rule further contemplates that no student shall be admitted or promoted to any subsequent higher class in any school unless he has completed the regular course of study of the class to which he was admitted at the beginning of the academic session and has passed the examination, at the end of the concerned academic session, qualifying him for promotion to the next higher class. Reading of both these rules together indicate that to be eligible for admission in class X, a student should have passed the IX class examination in the academic session in which he was admitted. Record in each of the cases indicates that in the academic session 2003-2004 all the four petitioners were admitted in the St. Paul's School, Morar, Gwalior. They perused their study in the aforesaid school and when they appeared in the examination conducted in Feb.-March, 2004, but they were declared failed in the class IX examination. However, surprisingly they were admitted in the class X by the respondent No. 3 Institute, even though in the mark-sheet Annexure P-3 issued by the St. Paul's School, they are shown as failed and the transfer certificate issued to each of the petitioners filed by the respondents Board as Annexure R/1-1, in each of the

cases, it is shown that the petitioners were student of class IX in St. Paul's School Morar, Gwalior, they have failed and promotion to them have been refused. It is, therefore, clear from these documents that petitioners have failed in the class IX examination in the school where they had completed the course for the academic session in question. However, they were granted admission in the next higher class, i.e., Class X by respondent No. 3 Institute and explanation given by respondent No. 3 Institute is that they were admitted in class X after they were permitted to be appeared in the supplementary examination for class IX and were declared successful in the supplementary examination. This contention of the respondent is refuted by the Board and in the return filed by the Board it has been clearly indicated by them that petitioners were not eligible to appear in the supplementary examination for class X to be conducted by respondent No. 3 Institute. Even if, they were eligible to appear in the supplementary examination, they can appear only in the school in which they were regular student of class IX and not in the school they were not regular student of class IX. There is much force in this contention, petitioners were regular students of St. Paul's School, Morar, Gwalior, and if they were declared failed by the said school, petitioners could appear in the supplementary examination only in the school in which they were regular students and had failed. It is not known as to under what circumstances and under what provisions, supplementary examination for class IX was conducted by respondent No. 3 for these students. The scheme of examinations and criteria for passing filed by respondent No. 3 institute is Annexure R/3-2, similarly the Secondary School Curriculum is Annexure R/3-3 both these documents indicate that a candidate failing in two subjects of examination shall, be placed in compartment in those subjects provided he or she qualifies in all these subjects in internal assessment. Thereafter, compartment examination is conducted for such failed candidate. Even though, no specific rules have been placed on record by the respondent No. 3 institute on the basis of which supplementary examination was conducted by them in the case of the petitioners. The averments made in the return filed by the Board of Secondary School Examination read with the documentation record indicates that supplementary examination can be conducted only by the school in which the students had undertaken the regular course of study in that academic year. It is stated by respondents Board in Para 5.3 of their return that the supplementary examination held for admission to class X in this case by respondent No. 3 is illegal. In the opinion of this Court, the procedure adopted by respondent No. 3 Institute for granting admission to the petitioners is clearly illegal. There is no provision for taking supplementary examination for students who were not regular students of respondent No. 3's institute in class IX. This is a case where direct admission in class X has been granted by respondent No. 3 to all the petitioners. This fact is clear from the report/LOC submitted by the school/respondent No. 3 Annexure R/3-5, wherein it is clearly indicated that all the petitioners were given admission directly in class X. When the petitioners have failed in the class IX examination and when transfer certificate issued to them indicates that they had failed in the class IX

and promotion have been refused to them granting of admission in class X is contrary to the Rules Annexure R/1-2 with regard to admission of students on transfer/migration, petitioners having failed in the qualifying examination, i.e., class IX were not eligible for admission in class X. That being so, it can not be said that the Board had committed any error in refusing to declare the results of the petitioners. The judgments relied upon by Shri V.K. Bhardwaj, all are distinguishable on fact. There are cases where admission of the students were not found to be illegal or invalid. They were cases where principle of promissory estoppel were applied and where it was found that the students who have not received admission by suppression of relevant fact and, therefore admission granted to them by the University can not be recalled and their admission cancelled. Present case is clearly distinguishable on fact. If procedure followed in the present case for admitting the petitioners to class X is given approval by this Court it will have serious adverse effect on the entire education system and will result in giving licence to private institutes to admit failed students in the next higher class. Any direction given for admitting the students in the next higher class on the basis of such a procedure will be amounting to circumvent the bye-laws framed by the Board and will be subversive academic discipline. At this juncture, I am tempted to refer to retain observation made by a Division Bench of this Court in W.P. No. 1104/2000 : Sharique Ali and Others Vs. State of Madhya Pradesh and Others, (DB)], Dr. Sharique Ali and Ors. v. State of M.P. In the said case Division Bench has referred to certain orders passed in W.P. No. 12104/01 with regard to functioning of a particular school. In this order has been observed as under :--

7. It is to be borne in mind that in a number of cases the Board has alleged fraud by the heads of the educational institutions and the people who run the schools. It is well settled in law that fraud vitiates every thing and every act be it temporal or celestial. History records that it is the education and education alone that can be the backbone of progress of a country. That is the elan vital of any civilization. This Court can not turn a Nelson's eye to the obtaining factual matrix. Playing possum to a fact situation by any one is never appreciated. Not for nothing it has been said that seeing things which are perceptible and to ignore it, is nothing but a manifestation of evil conscience. Imparting education can never be equated with profit oriented business. It is neither commerce or business. It is a spiritual duty a sacrosanct act to be performed with rigorous spiritual endeavour and sacred vision. The concept of egoity has to succumb for the betterment of the educational institutions. A society can not be permitted to run an educational institution without the infrastructure, as that would be an apology for imparting education. A Court of law can not countenance that moreso, when the regulations speak otherwise.

The question of permitting a student who had failed in the Class IX examination to appear in the Class X examination and the provisions of Clause 7.3 of the Rule was considered recently by the Supreme Court in the case of Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, . In the aforesaid case also a

student had failed in the Class IX examination, but she was permitted to appear in Class X examination treating her to be a private student by an interim order of this Court and, therefore, the petition was allowed and her result was directed to be declared. When the matter was agitated by the Board before the Supreme Court and in Paras 6 and 7 the matter has been dealt with in the following manner :--

Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions. A few decisions on the point may be perused. In *C.B.S.E. v. P. Sunil Kumar* the institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not affiliated to the Board, hence the students were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim orders granted by the Court in contravention of the rules and regulations of the Board. The High Court considering the matter sympathetically had not interfered, but this Court observed thus:

But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students.

The order of the High Court was set aside. Another decision reported in *Guru Nanak Dev University v. Parminder Kr. Bansal*, a three-Judge Bench decision, was relief upon in the case of *Sunil Kumar*. A passage from the above noted decision was also quoted therein which reads as follows :--

From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions can not be ordered without regard to the eligibility of the candidates.

Yet another decision referred to is reported in *A.P. Christians Medical Educational Society v. Govt of A.P.*, again a three Judge Bench decision. It was observed in this case :

We can not by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We can not imagine anything more destructive of the rule of law than a direction by the Court to disobey the laws." The student, namely, respondent No. 1 had failed to clear her Class IX examination which was a necessary requirement as provided under the bye-laws of the Board so as to be entitled to appear in Class X examination conducted by the Board. Despite notice, no one has put in appearance on behalf of respondent Nos. 1 and 2 to indicate any fact or circumstances to as to take any different view. Condoning the lapses or

overlooking the legal requirements in consideration of mere sympathy factor does not solve the problem, rather breeds more violations in the hope of being condoned. It disturbs the discipline of the system and ultimately, adversely affects the academic standards.

Keeping in view the observations made by the Supreme Court in the aforesaid judgment, this Court can not grant the relief claimed for by the petitioners in these petition. Even if, the argument of Shri V.K. Bhardwaj and Shri Vivek Jain to the effect that the petitioners were successful in the Class IX examination and authorities of St. Paul's School, Morar, Gwalior have incorrectly declared them as failed is accepted. In that event, petitioners should have agitated the matter when the Mark-sheets and Transfer Certificate showing them as failed in Class IX examination was issued by St. Paul's School, Morar, Gwalior. Having accepted the failed certificate issued by St. Paul's School, Morar, Gwalior and having accepted the fact that they have failed in the IX class examination conducted by St. Paul's School, Morar, Gwalior, petitioners can not now come out with a case that they be treated as passed and considering so, relief be granted to them. The aforesaid benefit can not be granted by this Court. During the course of hearing, Shri Bhardwaj taking me through the documents filed by the petitioners and the correspondence Annexure P-4 argued that there is no suppression of fact by the petitioners and therefore, petitioners can not be made to sufferer because of the illegal action of the school or Board. In my opinion, this argument can not be accepted. The most relevant fact which can not be lost sight by this Court is that after the petitioners were declared as failed by a particular school in the Class IX examination in the Academic Session 2003-04, they accepted the result then approached another school namely respondent No. 3, they were admitted in the next higher class contrary to the rules of admission of the Board. The aforesaid illegal admission is being justified by the institute by contending that they appeared in the supplementary examination and passed the examination. This procedure is wholly known, nothing has been brought to the notice of this Court wherein under any rule, regulation or bye-law the said procedure for admission is contemplated. Upholding an admission granted in such a manner will result regularizing an illegal procedure when petitioners were not eligible to appear in the supplementary examination conducted by the respondent No. 3. Petitioners have failed in the qualifying examination of class IX and, therefore, the Board was right in refusing declaration of their results after cancellation of their examination.

Accordingly, it is the considered view of this Court that the petitioners were not eligible to appear in the Class X examination conducted by the respondents Board and, therefore, no direction can be issued by this Court to the respondents Board for declaring the results of the petitioners. Accordingly, finding no ground to interfere in the matter, petitions stand dismissed without any order as to costs.