
(1998) 02 DEL CK 0005
In the Delhi High Court
Case No : CWP No. 4217 of 1997

Ajay Kumar

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Citation : (1998) 72 DLT 403 : (1998) 45 DRJ 129

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : Mr. Navin R. Rath, for the Appellant; Mr. Raman Kapur and Mr. Anil Kumar, for the Respondent

Judgement

1. The challenge in this writ petition is against the action of the Principle of the Delhi Public School, Mathura Road, New Delhi in detaining the petitioner in class X during 1997-98 academic year.

2. According to the petitioner he is a student of class X in the Delhi Public School, Mathura Road, New Delhi, a recognised unaided school. His father is a Tabla teacher the said school. The petitioner has been studying in the said school from the very beginning. Though he had failed in Mathematics in class IX he was promoted to class X. There were also other students who had failed in various subjects in class IX during 1996-97. Some had failed in as many as four out of five subjects. When they were summarily promoted, the petitioner was given promotion by Respondent No. 3, the Principal of the school, only after much persuasion and pleadings. It is alleged that Respondent No.3 had been forcing the petitioner to withdraw from the school on the ground of his poor performance in the first terminal test. The petitioner has placed on record the copy of a letter dated 3.9.1997 written by the Principal (Annexure- P2) to the parent of the petitioner stating that the petitioner had scored only 14% marks in the first test and that he was failing miserably and requesting the parent to withdraw the petitioner from the school immediately as per his undertaking. The petitioner has also placed on record a copy of the letter dated 16.9.1997 (Annexure- P3)

written by the parent to the Principal stating that there was no question of his taking action on the alleged undertaking said to have been executed by him. It was also stated in the said letter that the continuation of his child in the school was not a matter of contract as his continuation was dictated by law. It was further stated that the child could not be asked to withdraw from the school on the ground that he scored a low percentage of marks. Reference was also made in the letter to some judgments of the Hon"ble Supreme Court. It is alleged in the writ petition that the petitioner's father, being an employee of the school, is in occupation of the staff quarters since 1992. On account of his mother's illness the petitioner's father had been requesting for a change of the quarters but Respondent No.3 insisted that the petitioner should be withdrawn from the school first. It is stated that the petitioner's father refused to accept the said condition and as a result the petitioner's father has been subject to victimisation by Respondent No.3. By a letter dated 18.9.1997 of the Principal the petitioner's father was informed that there was no certificate in his file to show that he had attended any school up to any level. It was also pointed out in the letter that the date of birth given in the file of the petitioner's father did not appear to be supported by any acceptable document and that there was no evidence of any qualifications for teaching Table. The petitioner's father was, Therefore, directed to produce documents to prove his eligibility for appointment as a Table teacher on regular basis. The petitioner's father replied through a letter dated 24.7.97 stating that he had submitted the original certificates and attested copies within a period of fifteen days of acceptance of the appointment and that the said original certificates have been in the custody of the school since 1985. He also enclosed with the said letter photocopies of the qualification certificate and the date of birth certificate. Then the petitioner's father received the letter dated 24.9.97 (Annexure-P7) from Respondent No.3 informing as follows:-

"Your son Ajay Kumar has failed in all the subjects at First Terminal Examination. In class IX also in the final assessment he had failed. Since his performance for two years running has been extremely poor he has been detained in class X during 1997-98 session."

The petitioner's father immediately submitted a representation dated 24.9.1997 (Annexure-P8) to Respondent No.1, the Directorate of Education, complaining against the detention of the petitioner and requesting him to direct the school authorities to withdraw the detention. Thereupon the Education Officer, District South sent a letter to the Manager of the School pointing out that since the student had been promoted by the school on the basis of his performance from class IX to class X the student cannot be detained in class X. He also expressed the desire that Master Ajay Kumar (the petitioner) should be detained in class X and should be allowed to continue his efforts in class X. However, Respondent No.3 has not withdrawn or cancelled the detention of the petitioner. According to the petitioner, he has already filled up the Examination Form for class X examination to be conducted by the Central Board of Secondary Education and has also remitted the requisite fees of Rs. 302/-.

3. It is contended by the petitioner that the detention of the petitioner is illegal, arbitrary and motivated by mala fides and that it is dictated by extraneous considerations. It is also contended that the order of detention is illegal and void since Respondent No.3 is not recognised by the statutory authority i.e. Respondent No.1. It is further contended that the impugned order dated 24.9.1997 is discriminatory and violative of the petitioner's fundamental right under Article 14 of the Constitution of India. It is alleged that 18 students have failed in the petitioner's class itself in the first term examination in various subjects. According to the petitioner Respondent No. 3 has no power to detain any student in class X. It is also stated that the petitioner's promotion to class X was not a matter of discretion to be exercised by Respondent No.1 and that the petitioner had already been promoted by Respondent No. 3. It is further stated that even though the classes of standard X commenced from 1.4.1997 the petitioner was promoted to class X only in May 1997 and hence he had only a few weeks to study for the first term examination and Therefore the detention is unreasonable.

4. In the counter affidavit filed on behalf of respondents 2 and 3, it is stated that the petitioner had miserably failed not only in the first terminal examination in class X but also in the final examination in class IX. It is also stated that the petitioner had to spend two years in class IX since he had failed in 1995-96 session also. After having failed the second time in class IX in 1996-97 session, the petitioner was required to be detained in class IX but he was given retest in Mathematics considering that his father is the Table Player of the school. In the retest also the petitioner failed securing only 19.5% marks in Mathematics. As such the petitioner had failed in class IX and was not eligible to be promoted to class X. It is further stated that the petitioner's father repeatedly pleaded with the respondents and the petitioner was allowed to attend class X on clear undertaking given by the parent/father that if the petitioner failed in first term examination in class X, he would withdraw the petitioner from the school. The respondent have denied the statement of the petitioner that he was promoted to class X. According to the respondents, the petitioner was only allowed to attend class X subject to the condition mentioned above. It is further stated that since the petitioner failed in the first term examination of class X in July/August 1997, the father of the petitioner was asked to comply with the undertaking given by him. Since the father kept on delaying the matter without withdrawing the petitioner from the school, respondent No.3, again out of consideration that the petitioner's father is a Table Player in the school, allowed the petitioner to continue in class X instead of reverting him back to class IX. According to the respondents this is a case where the petitioner failed in class IX and instead of detaining him in class IX, he was allow to attend class X up to first term examination in view of the undertaking given by the parent. When the petitioner failed in the first term examination in class X, the father refused to withdraw the petitioner from the school as per his undertaking and respondent No.3 had no option but to provide shelter to the petitioner in class X till his father complied

with his undertaking. It is also stated that the petitioner had failed in all the subjects in the first term examination in class X and that there is no question of allowing him to take the Board Examination in March 1998. It is further stated that the petitioner's entry form for the CBSE examination in March, 1998 cannot be forwarded by respondent No.3 since respondent No.3 cannot give the following certification which is a prerequisite for admission to the Board Examination.

"The candidate has completed an adequate course of study prescribed for the examination as given in the Prospectus."

It is further contended that since the petitioner failed in class IX and was not promoted to class X and since the adequate course of study prescribed for class X Board Examination consists of pass in both classes IX and X, it is not possible for respondent No.3 to give an incorrect certificate to the CBSE that the petitioner has completed an adequate course. The specific stand of respondent Nos. 2 and 3 is that the petitioner was not promoted to class X and that the petitioner is not a student of class X and that he was only allowed to attend class X. Regarding the other students of class IX mentioned in Annexure P1, it is stated in the counter affidavit that they were either withdrawn from the school or detained in class IX or promoted to class X with grace marks. Respondents have specifically denied the allegation that a student who failed in four subjects had been summarily promoted. They have also denied the allegation that respondent No.3 forced the petitioner to withdraw from the school. According to the respondents, the petitioner's father himself approached respondent No.3 and gave an undertaking to withdraw the petitioner from the school if he did not pass the first term examination in class X. In view of the pleadings of the father and the undertaking given by him the petitioner was allowed to attend class X lectures up to the first term examination. Respondents have also denied the allegation that respondent No.3 insisted that the petitioner should be first withdrawn from the school before considering the request of petitioner's father for allotment of flat on the ground floor. According to the respondents, since no flat was available on the ground floor the petitioner's father continued to stay in the same flat where he has been staying since 1992. Respondents have denied the allegation of victimisation of the petitioner's father by respondent No. 3. It is also stated that the petitioner's father was able to procure teaching job of Table player in respondent No.2 school about 12 years ago by misrepresenting facts and that when the matter was detected recently the earlier mentioned letter dated 18th September, 1997 was issued to him asking for clarifications regarding his qualifications. The said dispute is stated to be pending before this Court in C.W.P. No. 4428/97. Respondents have also disputed the claim of the petitioner that respondent No.3 is not competent to pass the impugned order dated 24.9.97. It is contended that under the provisions of the Delhi School Education Act and the Delhi School Education Rules, respondent NO.3 is competent to pass the impugned order. Respondents have also disputed the statement in the letter dated 25.9.95 of the Education Officer to the effect that the petitioner cannot be

detained in class X. According to the respondents, the Education Officer was misled by the petitioner by providing incomplete information and the letter dated 25.9.97 was issued by the Education Officer without ascertaining the facts from respondent No.3. Respondent have disputed the claim of the petitioner that he has filled up the appropriate Entry Form for class X examination of CBSE and that he has remitted the requisite fee. According to the respondents the fee has to be remitted to CBSE through respondent No.2 school and the same can be done only if the petitioner is qualified to appear in class X Board Examination. Denying the allegation of discrimination against the petitioner respondents have stated that the 18 students mentioned in ground 3 in the writ petition were promoted to class X after passing class IX examination whereas the petitioner had not passed class IX examination and was ineligible to be promoted to class X and was merely allowed to attend class X lectures in view of the undertaking of the parent. It is also pointed out that the petitioner failed not only in the first term examination in class X but also in the half yearly examination in October 1997. The respondents have disputed the contention of the petitioner that respondent No.3 has no power to detain the petitioner in class X. It is explained in the counter affidavit that though classes had begun on 1.4.97, the petitioner was allowed to attend lectured in class X only from May 1997 since the petitioner was given a retest in Mathematics as requested by the petitioner's father.

5. In the look out for weapons in his armoury to attack the order of detention, the petitioner has produced as Annexure-P6, a copy of directions issued by the Director of Education u/s 24(3) of the Delhi School Education Act. One of the directions given to the Managing Committee of the school was to dispense with the services of Shri K.N. Sardana, Principal (Respondent No.3) as he had retired on 31.10.1995 on attaining the age of superannuation. The Director did not recognise the extension of service granted to Shri K.N. Sardana by the Managing Committee on the ground that he is an Ex-servicemen with meritorious service as a teacher and principal. The petitioner's contention is that Respondent No.3 was not competent to detain him since the continuance in service of Respondent No.3 was declared to be void ab initio by the Director of Education. To counter Annexure-P6, Respondents 2 and 3 have produced Annexure-R6 and R7 documents to show that Respondents 2 and 3 have not accepted the stand of the Director of Education. Notwithstanding the above mentioned difference of opinion between the Director and the Managing Committee regarding the validity of extension of service granted to Respondent No.3, admittedly Respondent No.3 has been continuing and effectively functioning as the principal of the school. In all matters relating to the school the teachers and the students Respondents No.3 has been discharging the functions, powers and duties of the Principal. The above mentioned dispute between the Director and the Managing Committee of the School is none of the petitioner's concern. The petitioner is bound to accept and recognise Respondent No. 3 as Principal of the school till the latter is duty removed from office by the competent authority.

6. The petitioner has referred to the controversy raised by Respondent No.3

regarding the qualifications and date of birth of the petitioner's father. On a careful consideration of the entire facts and circumstances of this cases, I am of the view that the said controversy has no relevance to the issue and questions arising in this case. This case can be decided without going into the details of the said controversy. Moreover the said controversy is already pending before this Court in another writ petition (Civil Writ Petition No.4428/97). Similarly the alleged refusal of the respondents to allot a ground floor flat to the petitioner's father also has no bearing on this case. The worst that could be said is that the respondents refused to allot a ground floor flat and also raked up the controversy regarding the qualification and date of birth of the petitioner's father on account of the refusal of the petitioner's father to withdraw the petitioner from the school. The detention of the petitioner cannot and is not alleged to be a fall out of those controversies.

7. During the course of arguments the learned counsel for the petitioner submitted that in the final examination in class IX, the petitioner had failed only in Mathematics whereas the learned counsel for respondent No. 2 and 3 submitted that the petitioner had failed not only in Mathematics but also in Social Science. Though the petitioner as stated in the writ petition that he had failed only in Mathematics respondents 2 and 3 have not controverted it in their counter affidavit. There is no averment in the counter affidavit that the petitioner had failed in Social Science also. The submission of the learned counsel for respondents 2 and 3 was based on the photocopy of the Progress Report 1996-97 produced as Annexure R-2 to the counter affidavit. The said Progress Report shows that in the annual examination in class IX the petitioner got 37 out of 100 marks for Social Science. (See Column "D" of the Progress Report). Column "C" gives the total of the marks obtained in the first and the second term examinations. As per column "C" the petitioner had got 39 out of 100 marks for Social Science. The entry in the column "C+D" shows the total of the marks shown in Column "C" and "D" for each subject. In the case of Social Science, the entry in the column "C" and "D" for each subject. In the case of Social Science, the entry in the column "C+D" is obviously erroneous. Instead of 76 what is shown is only 46. consequently in the column for %, the entry is 18 instead of 38. Apparently the learned counsel for respondents 2 and 3 was misled by the above mentioned erroneous entries in the Progress Report. It is also significant that the petitioner was given retest only in Mathematics. If he had actually failed in Social Science also, he would have been given retest in that subject also. Hence the petitioner's counsel with right in his submission that the petitioner had failed only in Mathematics.

8. According to the petitioner, he was duly promoted to class X and he is a regular student of class X and hence he cannot be detained under the relevant rules disputed his poor performance in the first and the second term examinations of class X. This is disputed by respondent 2 and 3. According to the respondents the petitioner had failed in class IX and was not eligible for promotion to class X and was not actually promoted. In response to the repeated

pleadings of the petitioner's father who is a Music (Table) Teacher of the same school, the petitioner was only allowed to attend class X in view of the clear undertaking given by the father that if the petitioner failed in the First Term examination of class X, the petitioner would be withdrawn from the school. A photocopy of the said undertaking is Annexure-R4 to the counter affidavit. Annexure-R4, which is a letter dated 30.4.1997 addresses to the principal and signed by the petitioner's father, reads thus:-

"I parent of Ajay Kumar Admission No.85290 class IX who has now been given conditional promotion to Xth do realize that my child is weak in studies. Further I do understand the condition on which the promotion has been given stands firm i.e. if he does not pass the first term examination 97 then I will withdraw him from the school."

It is seen that on the same letter the Principal wrote on 30.4.1997 as follows:-

"May be promoted on above condition First Term results of the child should be put up to me on 16th August, 1997."

But the word promoted has been struck off and in its place the words "allowed to attend class X" have been inserted later. The allegation of the petitioner is that the above correction was made by the Principal after the petitioner approached this Court through this writ petition. The petition has also produced a photocopy of the said letter dated 30.4.1997 with the original noting (before correction) of the Principal i.e. as it stood before the correction. The Principal has filed an affidavit dated 8.12.1997 admitting that the correction was made by him but stating that the correction was made by him when the class Representative put up the letter for clarification. Significantly the Principal has not stated that date on which or the month in which the correction was made. He has also not stated that the petitioner or his father was informed about the said correction at any point of time. Hence the petitioner was justified in thinking and stating that he was promoted to Class X, though the promotion was conditional. Moreover, admittedly the petitioner's name was included in the register of students of class X and his attendant so as being marked. In every respect he was being treated like a regular student. In the circumstances of the case and in the light of the pleadings of the parties the petitioner's allegation that the above mentioned correction was made after he approached this Court cannot be completely ignored. In these circumstances I will proceed on the basis the petitioner was promoted to class X on the condition stated in Annexure R-4 letter.

9. The next question is whether the Principal could promote a student on a condition similar to the one stated in Annexure-R4. The petitioner has not denied that the petitioner's father had given the undertaking contained in Annexure-R4. According to the learned counsel for the petitioner, the said undertaking was given by the petitioner's father in a desperate and coercive situation since the Principal would not promote the petitioner without such an undertaking. According to the learned counsel, there is no provision for any conditional

promotion and the undertaking extracted from the petitioner's father was quite unnecessary, unlawful and unenforceable. He contended that in view of the circumstances in which the said undertaking was given, it should not be held against the petitioner. Learned counsel for respondents 2 and 3 also admitted that there is no provisions for any conditional promotion. According to him, the petitioner was only allowed to attend the classes subject to the condition stated in Annexure-R4 and it was done only because the petitioner's father is a teacher in the school. I have already held that in the circumstances of this case I would proceed on the basis that the Principal had given conditional promotion to the petitioner and not mere permission to attend classes. Admittedly there is no provision for any conditional promotion. Admittedly there is no provision of law under which the Principal can compel the parent to withdraw a student of class X from the school on the ground that he failed in the terminal examinations. If the petitioner was to be eligible for promotion he should not have been promoted and he should have been detained in the same class irrespective of that the parent of the student is a teacher in the school. In this case the Principal allowed himself to be persuaded by a illegal and extraneous consideration and extended a favor to the petitioner subject to a condition which cannot be legally enforced. In these circumstances I hold that while giving promotion to class X the Principal could not have imposed the condition or accepted the undertaking that the petitioner would be withdrawn from the school if he did not pass in the first term examination in class X. No such conditional promotion is contemplated under the rules.

10. Thus the petitioner was not eligible for promotion to class X as he had failed in Mathematics in the annual examination of class XI. However by an irregular act, the Principal gave him a conditional promotion after taking an undertaking from his father that he would be withdrawn from the school, if he did not pass in the first term examination of class X. The petitioner did not pass in the first term examination of class X. But the father refused to withdraw the petitioner from the school. There is no provision in the rules to compel a student to withdraw from the school on the ground that he failed in the terminal examination. The undertaking given by the father of the petitioner is not legally enforceable. It is admitted in the counter affidavit of respondents 2 and 3 that though the petitioner's father refused to abide by his undertaking and to withdraw the petitioner from the school, the petitioner was allowed to continue in class X instead of reverting him back to class IX. It is further stated in the counter affidavit that the petitioner was allowed to continue in class X out of consideration that the petitioner's father is a Table Tennis Player in the school. Thus even after the petitioner had failed in the first terminal examination and the father refused to withdraw him from the school, he was allowed by the Principal to continue in class X. In other words, by his conduct the Principal waived the condition mentioned in Annexure-R.4. As already noted, the petitioner's name was included in the register of students and his attendance was being marked regularly and in all respects he was being treated like a regular student of class

X. He was also allowed to appear in the terminal examinations and Progress Reports were given to him. It is seen from Annexure-R1 Progress Report for the year 1997-98 that after the second term examination the Principal made the following remarks in the Progress Report:-

"Not to be allowed to take Board Examination if he fails in Pre Board Examination."

This clearly indicates that the petitioner was being treated by respondents 2 and 3 as a regular student of class X. Even according to the learned counsel for respondents, had the petitioner passed in the first term examination there would not have been any objection to his continuance in class X and his promotion to class X would have been treated as regular and proper and since the petitioner failed in the said examination he cannot be treated as promoted to class X and he cannot be treated as a regular student of class X. This stand of the respondents is absurd, arbitrary and unjust and cannot be accepted. Moreover if the contention of the respondents is accepted, the petitioner now will have to pass class IX and get promoted to class X and Therefore will have to attend class X for another year before appearing in the C.B.S.E. Examination of class X. It will result in serious injustice to the petitioner. A young boy cannot be allowed to suffer so much for the irresponsibility and imprudence of his father and his Principal. Hence I hold that the petitioner's promotion to class X should be deemed to be regular and that he should be deemed to be a regular student to class X.

11. It was admitted by the learned counsel on both sides that ordinarily a student cannot be detained in class X. They brought to my notice Bye law No. 15 of the Examination Bye laws of the C.B.S.E. It reads as follows:-

"Detaining of eligible candidates.

Heads of affiliated schools shall not detain eligible candidates from appearing at the examination of the Board except for very grave reasons and with the previous permission of the Chairman."

There is no indication in the said Bye laws as to what are the grave reasons for which a student can be detained. At any learned counsel for respondents 2 and 3 as well as learned counsel for the C.B.S.E. (respondent No.4) admitted that poor performance of a student in the terminal examinations of class X cannot be a ground for detention. They also admitted that the permission of the Chairman, C.B.S.E. was not obtained for detention of the petitioner. The reasons stated in Annexure-P7 for detaining the petitioner is extracted below:-

"Your son Ajay Kumar has failed in all the Subjects at First Terminal Examination in class IX also in the final assessment he had failed. Since his performance for two years running has been extremely poor, he has been detained in class X during 1997-98 sessions."

Admittedly the petitioner cannot be detained on the ground that he had failed in

all the subjects in the first term examination of class X. His performance in class IX also cannot be ground for detention in class X. Even if the petitioner had failed in the final assessment in class IX, after having promoted him to class X it is not open to respondents to say that the petitioner is being detained in class X for his failure in class IX. Hence the reasons stated in Annexure-P7 for the detention of the petitioner are not valid and sufficient reasons. The Chairman, C.B.S.E. has not given any permission for the detention of the petitioner as contemplated in Byelaw No. 15 of the Examination Byelaws. Hence the impugned detention of the petitioner is illegal and liable to be set aside.

12. In the counter affidavit filed on behalf of respondent No. (C.B.S.E.) it is pointed out that as per Byelaw No.6.4 of the Examination Byelaws a student cannot be promoted to a higher class unless he has passed the examination at the end of the concerned academic session, qualifying him for promotion. If further pointed out that as per Byelaw No. 7,3 admission to class X shall be open only to a student who has passed class IX examination. Hence it is contended that the petitioner's promotion to class X was irregular and Therefore he is not eligible to appear in class X examination conducted by C.B.E. Respondent No.4 is right in stating that the petitioner was not eligible for promotion to class X as he had not passed in Mathematics in class IX examination. However, I have already pointed out that in the peculiar facts and circumstances of this case the petitioner should be deemed to have been promoted to class X and that he is entitled to be treated as a regular student of class X. Once the petitioner is deemed to have been promoted to class X and is treated as a regular student of class X, the Shortage of marks in the examination of class IX cannot be held against him. Hence the contention of Respondent No.4 that the petitioner is not eligible to appear in class X examination cannot hold good and is liable to be rejected. I may also observe that the petitioner had failed only for Mathematics in class IX. As per AnnexureP1 he had got 23 marks. Admittedly, as per the circular issued by the Directorate of Education, Delhi, under Rule 41 of the Delhi School Education Rules, the Principal was competent to given 10 marks as grace marks to the petitioner in which case his marks in Mathematics would have risen to 33 according to the petitioner. It is also admitted in the counter affidavit of respondents 2 and 3 that some students who had appeared in class IX examination along with the petitioner were actually promoted to class X after awarding grace marks had the Principal given the maximum grace marks to the petitioner in Mathematics, the petitioner would have passed as per the marks shown in Annexure P-1. Since the Principal had actually promoted the petitioner to class X, it should be deemed to have been done by awarding grace marks to the petitioner. Otherwise the Principal could not have promoted the petitioner. Hence the marks obtained by the petitioner in Mathematics in class IX cannot be held against the petitioner now to detain him in class X. It is also significant that respondents 2 and 3 have not reverted the petitioner to class IX. Now obviously it cannot be done also. Then, if the contention of Respondent No.4 is accepted,

the petitioner will never be able to appear in class X examination. It will be very cruel and unjust to punish the petitioner to such an extent. Hence I reject the objection raised by Respondent No.4 against allowing the petitioner to appear in class X examination.

13. Learned counsel for respondents 2 and 3 submitted that in the case of the petitioner the Principal could not give the required certification that "the candidate has completed an adequate course of study prescribed for the examination as given in the prospectus" because, according to the Principal, the petitioner had failed in class IX and was not eligible for promotion to class X. The Principal cannot be heard to say so now. He is estopped from taking such a stand after giving "conditional promotion" to the petitioner and later allowing the petitioner to continue in class X without reverting him to class IX even after the condition for promotion was not fulfilled by the petitioner. The entire problem was created by the Principal first by giving a conditional promotion to the petitioner considering that the petitioner's father is a teacher in the school and thereafter by waiving the condition and allowing the petitioner to continue in class X. The Principal allowed the situation to develop to a point of no return. As already pointed out the position cannot be now reversed without doing very serious and undeserved injustice to the petitioner.

14. According to the learned counsel for the petitioner, after class X the petitioner wants to pursue study of music and he does not propose to go for higher studies. He requested this Court to take a sympathetic view so that the petitioner can appear in class X examination and become eligible for admission to some course in music.

15. In the light of the legal and factual position explained above, I am satisfied that the jurisdiction of this Court under Article 226 of the Constitution of India should be exercised in favor of the petitioner in the interest of justice. I am conscious of the fact that the petitioner's performance in studies was not at all good. I also do not approve the conduct of the petitioner's father in securing promotion by giving an undertaking and later refusing to abide by the said undertaking. I also recognise the need for strictly observing the provisions in the Examination Byelaws of the C.B.S.E. But the conduct and actions of the Principal in this case have left this Court with the only option of allowing the petitioner to appear in the class X examination. That is the only way to prevent a greater injustice.

16. Hence I declare that the impugned detention of the petitioner is illegal and unjust. The letter dated 24.9.1997 (Annexure-P7) of the Principal (Respondent No.3) is quashed. Consequently, the petitioner will be entitled to appear in the class X Examination to be conducted by C.B.S.E. in March 1998. Respondents 2 and 3 are hereby directed to forward necessary papers and documents to respondent No.4 forthwith through a special messenger. If the petitioner has to deposit any fees he shall be told about it and he shall be permitted to deposit it immediately. Respondent No.4 shall allot and communicate Roll Number and

Examination Centre to the petitioner without delay. In view of the assurance given to this Court by the learned counsel for Respondent No.4 on 28.1.1998, Respondent No.4 shall also arrange a special practical examination for the petitioner on a convenient date.

The writ petition is allowed in the above terms. No order as to costs.