
(2014) 02 CAL CK 0002

In the Calcutta High Court

Case No : Writ Petition No. 4401 (W) of 2014

Arup Kumar Shee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Citation : (2015) 2 WBLR 931

Hon'ble Judges : Debasish Kar Gupta, J.

Bench : Single Bench

Advocate : Tarun Das and Anindya Bose, for the Appellant; Ranjit Chatterjee and Nilratan Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.?Affidavit-of-service filed on behalf of the petitioner in Court today be kept with the record. This writ petition is filed by the writ petitioner upon the respondent No. 1 to allow him to participate in the ensuing higher secondary examination.

2. According to the petitioner, he appeared in the test examination (class - XII), 2013. He got loss marks in English, Chemistry and Mathematics. As a result, he was declared "failed" in the above examination by the respondent No. 4. His name was not forwarded to the respondent No. 1 to participate in the aforesaid examination.

3. It is submitted on behalf of the petitioner that in view of provisions of Regulation 9(1) and (2)(b) of the West Bengal Council of Higher Secondary Education (Examination) Regulation, 2006 inter-changing of compulsory elective subject and optional elective subject was permissible in case of the petitioner. According to the petitioner, in the event, the aforesaid interchange was allowed to the petitioner his name should have been forwarded to the respondent-council for allowing him to participate in the ensuing higher secondary examination.

4. Drawing the attention of this Court towards Regulations 9 and 20 of the West

Bengal Council of High Secondary Education (Examination) Regulation, 2006 as also Regulation 14 of the West Bengal Council of Higher Secondary Education (Admission and Allied Matters) Regulation, 2006 it is submitted by Ranjit Chatterjee that the petitioner was not entitled for interchanging the subject for the purpose of participation in the ensuing higher secondary examination.

5. The above submission made on behalf of the respondent council is adopted by the learned Counsel appearing on behalf of the respondents No. 4, 5 and 6.

6. I have heard the learned Counsel appearing for the respective parties as also I have considered the facts and circumstances of this case. I find that the petitioner got 26 marks in English (compulsory subject), 29 in Chemistry (Compulsory Elective Subject) and 06 in Mathematics (Compulsory Elective Subject). So he failed to obtain pass marks in the above subjects. In order to adjudicate the claim of the petitioner the provisions of Regulation 9 of the West Bengal Council of High Secondary Education (Examination) Regulation, 2006 is quoted below:-

9. Option of changing compulsory elective subject as compulsory optional subject etc. - (1) If a candidate fails to obtain minimum pass marks in any compulsory subject excepting Environmental Education for the reasons of deficiency of less than five per centum of full marks, he shall, to make up the deficiency in the compulsory subject, be given credit by transfer of marks from the highest marks obtained by him in a compulsory subject excepting Environmental Education.

(2) Notwithstanding anything contained in regulations 6, 7 and 8, a regular candidate or continuing candidate or special candidate who cannot be declared passed in the examination by reason of his-

(a) not appearing in the examination of a compulsory elective subject, or

(b) failure in obtaining the minimum pass marks in a compulsory elective subject, but has obtained the minimum pass marks in the optional elective subject, shall be declared passed by giving him the benefit of inter changing the compulsory elective subject as the optional elective subject and vice versa:

Provided that if a candidate does not, for any reason, intend to take the benefit of interchanging the subjects, he shall through his institution, intimate his intention as such, and surrender his mark-sheet for necessary correction therein, to the Council within thirty days from the date of publication of results."

7. The provisions of Regulation 14 of the West Bengal Higher Secondary Education (Admission and Allied Matters) Regulations, 2006 are also quoted below:-

"14. Course of study-

(1) The Higher Secondary Course shall consist of two parts, i.e. class XI and class XII.

(2) The curriculum of Higher Secondary Course shall consist of-

- (a) two language subjects, one each from Group A and Group B of Schedule II;
- (b) three compulsory elective subjects, one each to be chosen from any set of elective subjects specified in column (2) against the nine groups specified in column (1) of Schedule III;
- (c) one optional elective subject may be chosen from any set of elective subjects remaining after the selection of compulsory elective subjects under clause (b);
- (d) one compulsory subject on Environmental Education to be studied in accordance with regulation 15:

"Provided that out of the two language subjects as referred to in clause (a), every student of the Higher Secondary Course shall,

- (i) choose one language subject each from Group A and Group B, of which one of the language subjects must be English, and
- (ii) have passed those two language subjects at the lower level examination or its equivalent examination instituted by the Board or any other authority recognized by the Council."

Provided further that if a student chooses English as a language subject from Group A of Schedule II, he shall have to choose Bengali, Hindi, Nepali or Alternative English as another language subject from Group B of that Schedule:

Provided also that only those students can choose alternative English, who has not offered any language subjects other than English, as specified in part A of Schedule II, in Madhyamik Praiksha or equivalent examination.

(3) Each paper relating to subjects referred to in sub-regulation (2) shall carry 100 marks in each part of Higher Secondary Course excepting the subject referred to in sub-regulation 2(d) which shall carry 100 marks in Higher Secondary course combining class XI and XII:

Provided that if any subject consists of theoretical and practical paper or project thereon in its syllabus, then the 100 marks shall be deemed to have included mark for practical paper or project thereof."

8. After perusing the aforesaid provisions I find that the petitioner is not entitled to participate in the ensuing higher secondary examination on the basis of his performance in the test examination (Class-XII) for the following reasons:-

(i) The petitioner failed in one compulsory subject and two elective compulsory subjects. Inter-changing of one elective subject is permissible in view of the provisions of Regulation 9 of the West Bengal Higher Secondary (Examination) Regulation, 2006.

(ii) Inter-changing of compulsory subject (in this case English) with optional

elective subject is not permissible in accordance with the provisions quoted hereinabove.

9. In view of the above, this writ application is misconceived and the same is dismissed.

10. However, there will be no order as to costs. Urgent photostat certified copy be supplied to the parties, if applied for, on priority basis.