

(2007) 02 AHC CK 0014
In the Allahabad High Court
Case No : Writ Petition No. 1082 (M/S) of 2007

Ashutosh Shukla	Vs	APPELLANT
Council for the Indian School Certificate Examinations and Others		RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 4 ADJ 301 : (2007) 7 AWC 7775

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : C.P.M. Tripathi, for the Appellant; Kirti Kar Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—Through the instant petition, the Petitioner has prayed for quashing of the letter dated 14.2.2007, passed by the opposite party No. 1, as contained in Annexure-4 to the writ petition, whereby the Council for the Indian School Certificate Examinations, New Delhi, has informed the Principal that since the Petitioner's attendance is less than 60% of the total working days, (only 39%) which is minimum requirement for condonation, therefore, the attendance cannot be condoned. This decision of the Council was communicated to the father of the Petitioner vide Annexure-5 which is a copy of letter dated 23.2.2007.

2. Learned Counsel for the Petitioner does not dispute the fact that attendance of the Petitioner is short, but he submits that on account of his illness that the Petitioner did not attend the institution. The submission further is that the representation preferred by Petitioner has not been dealt with by the opposite party No. 1 in its right perspective.

3. Father Wilson, Principal of St. Fidelis College, Aliganj, Vikas Nagar, Lucknow, who was called upon by this Court is present and has also produced the relevant

record pertaining to Petitioner's attendance in the institution for the year 2006-2007, including the photo copies of the attendance register. On 8.2.2007 a letter was also written to the Petitioner wherein it was indicated that for appearance in examinations the Indian School Certificate Examinations Board a student must have atleast 75% of the attendance of working days in an academic year. Monthwise attendance of the Petitioner has also been provided which is as follows :

April, 2006 9 days May, 2006 2 days July, 2006 11 days August, 2006 12 days September, 2006 5 days October, 2006 4 days November, 2006 16 days December, 2006 6 days January, 2007 1 day February, 2007 Nil Total No. of days 66 days

4. Perusal of the aforesaid would reveal that in the entire year the Petitioner attended the institution only for a period of 66 days. The Principal of the Institution further points out that the representation preferred by the Petitioner alongwith all the medical certificates were forwarded to the Council for consideration regarding condonation of his attendance. Since it was below the prescribed limit, therefore, the Council did not condone the same which fact was also intimated to the Petitioner.

5. The Rules pertaining to the conducting of Indian School Certificate Examinations has lay down the minimum attendance requirement. Rule 5 of the Rules postulates that there is no age limit for candidate taking the examination. Clause "D" provides for minimum attendance. The said Rule is reproduced hereinunder :

5D. Minimum Attendance Requirement.

Candidates whose attendance is below 75% of the working days are ordinarily not eligible to sit for the examination. However, the Chief Executive and Secretary has authority to condone the shortage in the case of candidates whose minimum attendance is not less than 60% of the working days. Heads of Schools may represent to the Chief Executive and Secretary, cases of candidates who deserve special consideration for condonation, provided that the attendance of such candidates is not less than 60% of the working days. The last date for computing attendance is February 15, of the year of the examination.

6. A perusal of the aforesaid Rule reveals that candidates whose attendance is below 75% of working days are not eligible to sit for examinations, however, the Chief Executive and Secretary of the Council has authority to condone the shortage in case candidates whose minimum attendance is not less than 60%.

7. In the case at hand the Petitioner has attended the school in the entire academic session 2006-2007 only for 66 days which comes to about 39%. The opposite party No. 1 as per the aforesaid Rule has refused to condone the shortage of attendance. This Court in exercise of powers under Article 226 of the Constitution of India cannot enter into the question with regard to shortage of

attendance, which power is exclusively within the domain of opposite party No. 1 and has been exercised in accordance with law. Thus, the order passed by the opposite parties Nos. 1 and 2 deciding the question of shortage of Petitioner's attendance cannot be interfered with as the same does not appear to suffer from any illegality or infirmity.

8. The writ petition in the circumstances being devoid of merit, is hereby dismissed.

9. The Petitioner lastly requested that he may be allowed to approach the opposite party No. 2 today regarding his grievance through a representation. Taking a benevolent view, in case a representation is preferred, the same shall be considered and decided by the opposite party No. 2 today itself by evening.