

(2005) 12 UK CK 0019

In the Uttarakhand High Court

Case No : Writ Petition No. 157 of 2004 (M/B)

Atif Ali

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Citation : AIR 2006 Utt 14 : (2006) 2 UC 1061 : (2006) 1 UD 173

Hon'ble Judges : Cyriac Joseph, C.J;P.C.Verma, J

Bench : Division Bench

Advocate : Arvind Vashisth, for the Appellant; Alok Singh, assisted by Gopal Narain, for the Respondent

Judgement

Cyriac Joseph, C.J.—The petitioner was a student of Class-X in the Children's Senior Academy School, Roorkee during the academic year 2003-04. According to the petitioner, owing to his illness, he could not secure the minimum attendance required for appearing in the Class-X examination conducted by the Central Board of Secondary Education (CBSE). Hence he applied for condonation of shortage of attendance through the Principal of the school. His application for condonation of shortage of attendance was forwarded to the Regional Office of C.B.S.E. at Allahabad by the Principal along with similar applications of three other students as per his letter dated 10-2-2004. Later, a separate letter dated 14-2-2004 was sent by the Principal to the Regional Office of CBSE at Allahabad annexing necessary medical certificates and recommending condonation of shortage of attendance. The said letter dated 14-2-2004 (the date was wrongly written as 14-2-2003) was in respect of the petitioner and another student. The said letter dated 14-2-2004 was received In the Regional Office of CBSE at Allahabad on 16-2-2004 and the receipt of the letter was duly acknowledged as seen from the seal and endorsement of the CBSE. It is seen from the letter dated 14-2-2004 that in the case of the petitioner, the Principal had written "His Medical Certificate is attached herewith from Government Hospital w.e.f. 13-11-2003 to 12-1-2004 along with his application." The said letter also shows

that all original applications and certificates were enclosed with the letter. However, through Annexure-3 communication of the Principal, the petitioner was informed that though his request for condonation of shortage of attendance was recommended and forwarded to the CBSE as per letters dated 10-2-2004 and 14-2-2004, the shortage of attendance was not condoned by the CBSE. Thereupon the petitioner filed this writ petition praying for quashing the order passed by the first respondent/Chairman CBSE refusing to condone shortage of attendance and communicated to the petitioner through Annexure No. 3 undated letter of the Principal. He also prayed for direction to the respondents to allow him to appear in ClassX-Examination of the year 2004.

2. Alongwith the writ petition, the petitioner filed an application for interim direction to permit the petitioner to appear in Class-X Examination of the year 2004 provisionally. As per interim order dated 27-2-2004 passed by this Court, the petitioner was permitted to appear in the examination provisionally. Later, by another order dated 6-7-2004, the respondents were directed to declare the result of the petitioner provisionally and subject to the decision of the writ petition. Accordingly, the result of the petitioner was declared and he was declared to have passed Class X-Examination. On the basis of the result so declared, the petitioner joined Class XI and he is now studying in Class XII and is preparing for the Class XII Examination to be held in February March, 2006.

3. A counter affidavit was filed on behalf of Respondent Nos. 1 and 2. In the said counter affidavit, it is stated that the total attendance of the petitioner was less than 60% for the entire session and that as per , Clause 14 of the Examination Bye laws of the C.B.S.E., the Chairman is empowered to condone only shortage of 15% attendance. It is also stated that a student having less than 60% attendance is not entitled for any condonation.

4. Clause 14 of the Examination Bye-laws of the C.B.S.E. is quoted below:

14. Rules for Condonation of Shortage of Attendances

(i) If a candidate's attendance falls short of the prescribed percentage, the Head of the School may submit his name to the Board provisionally. If the candidate is still short of the required percentage of attendance within three weeks of the commencement of the examination, the Head of the Institution shall report the case to the Regional Officer concerned immediately. If in the opinion of the Head of the Institution, the candidate deserves special consideration, he may submit his recommendation to the Regional Officer concerned not later than three weeks before the commencement of the examination for condonation of shortage in attendance by the Chairman, CBSE, who may issue orders as he may deem proper. The Head of the School in his letter requesting for condonation of shortage in attendance, should give the maximum possible attendance by a student counted from the day of commencing teaching of Classes X/XII (beginning of the session) upto the 1st of the month preceding the month in which the examination of the Board commences, attendance by the candidate in

question during the aforesaid period and the percentage of attendance by such a candidate during the aforesaid period.

(ii) Shortage upto 15% only may be condoned by the Chairman. Cases of candidates with attendance below 60% in Class X or Class XII, as the case may be, shall be considered for condonation of shortage of attendance by the Chairman only in exceptional circumstances created on medical grounds, such as candidate suffering from serious diseases like Cancer, Aids, T.B. or any other disease or injury requiring long period of hospitalisation.

(iii) The Principal shall refer a case of shortage within the prescribed list of condonation to the Board, either with the recommendations or with valid reasons for not recommending the case.

(iv) The following may be considered valid reasons for recommending the cases of the candidates with attendance less than the prescribed percentage:

(a) Prolonged illness;

(b) Loss of father/mother or some other such incident leading to his absence from the school and meriting special consideration; and

(c) Any other reason of similar serious nature

(d) Authorized participation in sponsored tournaments and sports" meets of not less than inter-school level and at NCC/NSS camps"including the days of journeys for such participation shall be counted as full attendance.

From the above quoted Clause 14 of the Examination Byelaws, it is clear that shortage upto 15% only may be condoned by the Chairman and that cases of candidates with attendance below 60% shall be considered for condonation of shortage of attendance by the Chairman only in exceptional circumstances created on medical grounds. Hence, it cannot be disputed that the Chairman has the power to condone shortage of attendance in the case of students with attendance below 60%. It implies that the Chairman has a corresponding duty to consider an application submitted by a student with attendance below 60%, though he has the discretion to allow or to reject the application.

5. Since the learned Counsel for the petitioner contended that the Chairman, CBSE had not actually considered the application of the petitioner in the light of Clause 14 of the Examination Byelaws, this Court had passed an order dated 2-8-2005 directing the petitioner to make available a copy of the medical certificate annexed to his application for condonation of shortage of attendance and the respondents also were directed to make available a copy of the order passed by the Chairman, Central Board of Secondary Education rejecting the petitioner's application. In compliance with this Court's order dated 2-8-2005, a counter affidavit has been filed by the second respondent, Regional Officer, CBSE, Allahabad. In the said counter affidavit, the second respondent has stated that the respondent Board had received only recommendation letters dated

14-2-2003 and 10-2-2004 from the Principal, Children's Senior Academy, but no medical certificate had been annexed to the recommendation letters. It is also stated that the Competent Authority passed an order dated 17-2-2004 rejecting the request of the petitioner for condonation of shortage of attendance, on the ground that no reason was mentioned in the recommendation letter of the Principal and no medical certificate was annexed as provided under Clause 14 of the Examination Byelaws of the CBSE. A true copy of the said order dated 17-2-2004 and a true copy of the information letter dated 20-2-2004 are annexed to the counter affidavit as Annexures C.A. 1 and C.A.2. Annexure C.A. 1 shows that one Assistant Secretary, Examination had passed the following order on 17-2-2004:

Shortage of attendance SI. No. 01 to 4 may not be condoned as the percentage of attendance is less than 60%.

It is also seen that the following remark was written against the name of the petitioner and the other students:

Reason not mentioned.

However, there is no mention in Annexure C.A.-1 that the application was not accompanied by any medical certificate. As per Annexure C.A. 2 letter dated 20-2-2004, the Assistant Secretary, Examination in the Regional Office of CBSE at Allahabad informed the Principal of the school that the shortage of attendance in respect of the petitioner and three other students had not been condoned and as such their admission cards should be detained and returned to the Regional Office. In Annexure C.A. 2 also it was not stated that the petitioner's application was not accompanied by medical certificate. Hence, the averment in the counter affidavit that the request was rejected on the ground that no medical certificate was annexed as provided under Clause 14 of the Examination Byelaws is not factually correct.

6. In the counter affidavit filed by the second respondent, there is no averment that the request of the petitioner for condonation of shortage of attendance was considered and rejected by the Chairman of the CBSE as required under Clause 14 of the Examination Byelaws of the CBSE. On the other hand, it is admitted that the petitioner's application for condonation of shortage of attendance was considered and rejected by the Assistant Secretary, Examination in the Regional office of the CBSE at Allahabad. Therefore, the contention of the learned Counsel for the petitioner that the petitioner's application for condonation of shortage of attendance was not actually considered by the Chairman of the CBSE as required under Clause 14 of the Examination Byelaws of the CBSE is factually correct.

7. It is also to be noted that the only ground on which the application was rejected was that the petitioner's attendance was below 60%. The Assistant Secretary, Examination who rejected the petitioner's application was ignorant of the provisions contained in Clause 14 of the Examination Byelaws or he was deliberately withholding the application without placing it before the Chairman

who had the power to consider the application even if the attendance was below 60%. In either case, the action of the Assistant Secretary, Examination is objectionable.

8. Annexure C.A. 1 order dated 17-2-2004 also reflects total non-application of mind by the Assistant Secretary. Against the name of the petitioner, it is remarked: "Reason not mentioned". On the other hand, the petitioner's application was on the ground of illness and the application was accompanied by medical certificate and the application was recommended by the Principal. When the dispute came to the Court, a counter affidavit was filed on behalf of the second respondent stating that no medical certificate had been annexed with the recommendation letter. This statement is obviously false. The Principal, in her letter dated 14-2-2004, had specifically stated that the petitioner's medical certificate from Government Hospital w.e.f. 13-11-2003 to 12-1-2004 along with his application was attached therewith. The said letter dated 14-2-2004 also shows that all original applications and certificates were enclosed with the letter. The second respondent has admitted that the letter dated 14-2-2004 was received by the second respondent. The second respondent never wrote any letter to the Principal stating that no medical certificate was enclosed with the letter dated 14-2-2004 as stated in the letter. If the annexures were not there, the second respondent would have and should have informed the fact to the Principal. When the second respondent did not inform the Principal at any time that the enclosures mentioned in the letter were not there, it has to be presumed that the enclosures were there and that the medical certificate of the petitioner was attached to the petitioner's application. In such circumstances, we cannot appreciate or condone the conduct of the second respondent in filing an affidavit in the Court making a false statement that the medical certificate of the petitioner was not annexed with the recommendation letter. Such a conduct is not expected of a responsible officer of the CBSE which deals with the career of lakhs of students who appear in the examinations every year. In view of the above averment in counter-affidavit dated 2-10-2005 filed on behalf of second respondent, we had to direct the third respondent-Principal of the school to file a counter-affidavit stating whether the Principal had recommended condonation of shortage of attendance in the case of the petitioner. The Principal was also directed to disclose whether any medical certificate/evidence in support of the claim of the petitioner was forwarded to the CBSE by the Principal. Accordingly, on behalf of the third respondent who is stated to be on leave, the Vice-Principal of the school has filed a counter-affidavit dated 12-10-2005. It is stated in the said counter-affidavit that the petitioner's application alongwith the original medical certificate was forwarded by the Principal to the second respondent by hand and that it was received by the office of the second respondent on 16-2-2004. It is also stated that the original medical certificate was enclosed with the Principal's letter dated 14-2-2004. A copy of the letter dated 14-2-2004 is produced as Annexure No. 2 to the counter-affidavit. It is also stated that Annexure No. 1 to the writ petition is a true copy of the above-mentioned letter

dated 14-2-2004 sent by the Principal to the second respondent.

9. In the light of the above facts, it is clear that the petitioner had a right to have his application for condonation of shortage of attendance considered by the Chairman of the CBSE as provided in clause 14 of the Examination Bye-laws of the CBSE but the said right was wrongly and illegally denied to him. The petitioner had submitted his application in time along with the necessary medical certificate and the application was duly recommended by the Principal of the School. However, the Regional Office of the CBSE at Allahabad failed or refused to place the matter before the Chairman and the application of the petitioner was rejected at the level of the Assistant Secretary in the Regional Office at Allahabad on the ground that the petitioner's attendance was below 60%. Apparently, the Assistant Secretary was influenced by the fact that he does not have the power to condone shortage of attendance below 60%. But he failed to take note of the provisions contained in Clause 14 of the Examination Bye-laws of the CBSE and to place the petitioner's application before the Chairman, CBSE who alone had the power to consider the application and to allow the request. Hence, the order rejecting the petitioner's application is liable to be quashed.

10. Considering the sequence of events in this case, the conduct of the second respondent in making false averment in the counter-affidavit and the fact that the petitioner has already been declared to have passed Class-X Examination and is preparing to appear in Class-XII Examination, we are not inclined to refer the petitioner's application to the Chairman of the CBSE at this stage. In our view, owing to the conduct of the Regional Office of the CBSE, the petitioner has suffered enough and a boy of 17 years should not be subjected to further anxiety, agony and tension. We wish to make it clear that in the normal circumstances, we would not have shown any leniency to the petitioner in this case and that we are condoning the shortage of attendance in his case only because the second respondent illegally and arbitrarily denied to the petitioner the right to have his application considered by the Chairman of the CBSE.

11. In the above circumstances, we direct that the shortage of attendance for appearing in Class-X Examination in the case of the petitioner shall be treated to have been condoned and the application of the petitioner for condonation of shortage of attendance shall be treated to have been allowed. Consequently, the appearance of the petitioner in Class-X Examination on the basis of the interim order passed by this Court shall be treated as regular and the petitioner shall be treated to have passed Class-X Examination. It implies that the petitioner will be entitled to apply for admission in the Class-XII Examination to be conducted in February-March, 2006. The application of the petitioner for admission in Class-XII Examination of 2006 shall not be rejected on the ground that he did not have minimum attendance in Class-X.

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