

(2000) 08 SC CK 0109

In the Supreme Court Of India

Case No : Civil Appeals No. 5614 Of 1999 With No. 5615 Of 1999

Central Board of Secondary Education and Another

APPELLANT

Vs

Gaurav Mishra and Others

RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Citation : AIR 2000 SC 3662 : (2000) AIRSCW 4545 : (2000) AIRSCW 4132 : (2001) 1 ALD(Cri) 363 : (2001) ALLMR(Cri) 371 : (2001) CriLJ 119 : (2000) 4 CTC 622 : (2000) 7 SCALE 253 : (2000) 8 SCC 568 : (2000) 4 SCR 287 Supp : (2000) 7 Supreme 396 : (2000) 8 Supreme 279

Hon'ble Judges : M. Jagannadha Rao, J; M. B. Shah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. At the time of admission of these appeals, this Court passed an order on 24-9-1999 as follows :-

"Learned counsel wants the question of law to be decided. We are, therefore, issuing notice on the question of law raised in the SLP but we make it "clear that so far as the students involved in these two SLPs are concerned, the result of their examinations for the Xth, XIth and XIIth Classes will be declared irrespective of the judgment under appeal.

Leave granted to the extent indicated above."

2. The judgment of the learned single Judge of the High Court in this case is dated 19-2-1999 and that of the Division Bench is dated 24-5-1999 and the relevant years of the CBSE Examination in this case were 1997 to 1999.

3. The point that arose for consideration before the learned single Judge and the Division Bench of the High Court was whether candidates who were under the CBSE Scheme of Education and who had passed four out of five subjects in March, 1997 but had failed in the first supplementary examination held in August, 1997 and who had passed in the second supplementary examination in

the X Class subject in March, 1998 in the single subject in which they had earlier failed, could be allowed to take the XIIth Class Examination in March, 1999. It appears, they have passed the said second supplementary examination of X Class in that single subject and the XI Class in March, 1999.

4. The facts are as follows :- The respondent had passed in four subject of five in March, 1997, failed in one subject in the Compartment Examination in August, 1997, but allowed to go into XI Class. They took the XI Class and they failed in the year of X Class in March, 1998 and they appeared for XII Class in March, 1999. Result was withheld by the CBSE.

5. The CBSE Board, relying upon the Rules contended that there should be a gap of two years between the passing of the Xth Class and the date of examination for the 12th Class. On the other hand, writ petitioners-respondents contended that if they had passed in the March Examination of 1997 in the Xth Class in four subjects and the Rules permitted not only one supplementary examination, but also second supplementary examination, as stated above, they could be provisionally admitted into XIth Class and once they passed the second supplementary examination in the Xth Class in the failed subject in March, 1998 along with XI Class, the position would be that they had completed one full academic year for the XIth Class and another full academic year for the XIIth Class and that there could be no objection under the Rules for their taking the XIIth Class Examination on March, 1999. In other words, the CBSE would consider that the 2 year period could be commenced from July, 1997, if they had passed in the failed subject but if they passed that subject in March, 1998, they have to take the Class XII examination only in the year 2000 and not in March, 1999. The respondent contended otherwise.

6. The High Court construed the Rules in a flexible manner and came to the conclusion that even students who had failed in the first supplementary examination in August, 1997 but passed in the supplementary examination of March, 1998 in the failed subject (and the XI Class, could appear for the XIIth Class examination in March, 1999, inasmuch as they had full two years of academic career in the XIth and the XIIth Classes. Otherwise, the students would lose one valuable year in their career.

7. We are in full agreement with this liberal view taken by the High Court inasmuch as it saves one year of a student's career rather than compelling him to be idle at home.

8. We would also point out that the bye-law 42 of the CBSE Examination Bye-laws which are effective from 31st July, 1995, have since been amended, by the Examination Committee in its meeting dated 6-10-1998 and the said amendment has been approved by the Governing Body of the CBSE examination, on 9-10-1998. Clause (vi) which has been added reads as follows :-

"A candidate who is placed in compartment and fails to pass the Secondary School Examination (Class X) at the first chance compartmental examination

held in July/August of that year shall not (NOT) be admitted to Class XI."

9. Obviously, this amendment is a consequence of the problem which, arose in the case which went up before the Punjab and Haryana High Court in the present batch of cases. As per the amended rule, only students who pass compartment examination in the failed subject in the first supplementary examination of July-August, will be entitled to go into Class XI and not students who have failed in July-August examination in that subject and who have passed that subject in the ensuing March examination of the next year.

10. Learned counsel for the respondent, however argued that when the CBSE examination is permitting even now a second compartmental supplementary examination for the students to take the compartmental examination, discrimination cannot be made between those who take the first compartmental examination and those who take second compartmental examination. The latter must also be allowed to go to Class XI, and take the XII later in the usual course. In the present case, we are not going into this contention, as we are not concerned with the students falling under the amended clause.

11. We may however, point out that the amendment referred to above also supports the view taken by the High Court inasmuch as while before the amendment a candidate could have gone to Class XIth and passed the said examination along with the second compartmental examination of Class X, and then take up the XII Class examination in the next year, the present amendment restricts this privilege only to the first chance only, namely, first compartmental examination of July-August of the year.

12. We Interpret the Rules which stood before the amendment as stated above and also hold that the High Court was right in its Interpretation of the Rules. The appeals are accordingly dismissed.