

(2011) 08 DEL CK 0029

In the Delhi High Court

Case No : Writ Petition (C) No. 3270 of 2011

Master Mohammad Akram Khan

APPELLANT

Vs

Jamia Senior Secondary School and Others

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 182 DLT 151

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Kusum Sharma, for the Appellant; M.A Siddiqui and Rohit Gandhi, for the Respondent

Final Decision : Allowed

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks directions to direct Respondent Nos. 1 and 2 to allow him to reappear in the English as well as Mathematics examination of XI class and thereafter assess his suitability for promotion to class XII.

2. The background of facts that has led to the filing of the present petition is that the after passing his class X CBSE examination, the Petitioner took admission in the Respondent school in XI class in the academic year 2010-11, the annual examinations for which were scheduled to be held from 2.3.2011 to 28.3.2011. It is further stated that the Petitioner fell ill from 10.3.2011 to 16.3.2011 due to enteric fever and thus could not appear in his English examination, which was held on 14th March, 2011 due to his illness and for which he had duly submitted his medical certificate on 18.3.2011 with Respondent No. 1. It is further the case of the Petitioner that on 6.4.11, the result of his annual examination was declared wherein he was declared "failed". It is also the case of the Petitioner that in the marksheet supplied to him he was shown failed in two subjects i.e. Maths as well as English. It is also the case of the Petitioner that he had not failed in English subject in as much as in the said subject he could not appear in

the annual examination because of his illness and, therefore, the Petitioner could not be treated as "failed" in the said subject by the Respondent. The grievance raised by the Petitioner is thus that Respondent No. 1 school has acted in a most illegal and arbitrary manner by not permitting the Petitioner to reappear in the said two subjects and being aggrieved with the same, the Petitioner has preferred the present petition.

3. Learned Counsel for the Petitioner submits that the Petitioner had failed only in one subject i.e. Mathematics and not in English subject which he in fact could not appear due to medical reasons. Placing reliance on the relevant part of the instructions issued by the Respondent regarding evaluation and promotion of students from one class to another for class IX and XI, counsel pointed out that as per the own instructions of the Respondent, the student on leave either in the comprehensive test or annual exam is entitled for re-appearance in the compartment examinations, if such a student has absented himself on medical grounds and has applied for leave duly supported by medical certificate. Counsel further argued that even the said relevant rule entitles the student to appear alongwith the students taking the compartment exam even if he has failed in one or more subjects on medical grounds. Counsel also submits that the Respondents are wrongly interpreting the said rule by denying and defeating the right of the Petitioner to appear in the English paper in which he did not fail but was only absent. Counsel also submits that the said relevant rule should be interpreted in favour of the student and not in a manner which would waste one precious academic year of the student.

4. Opposing the present petition, learned Counsel appearing for the Respondent submits that the rule being cited by the counsel appearing for the Petitioner would not help the case of the Petitioner as the same would be applicable in a situation where the student does not fail in any of the subjects. Placing reliance on relevant rule (i) of the compartment examination the counsel submits that a student who secured at least 20% marks in one failing subject can be permitted to appear in the compartment examination, but in the case of the Petitioner even if he is permitted to appear in the English exam he will be still declared as failed having already failed in Mathematics exam. Counsel further submits that the issue of the Petitioner was duly examined by a three member committee constituted by the Respondent and the said expert committee also took the same view that the Petitioner is ineligible to appear in the compartment exam in the English subject. Counsel for the Respondent submits that the relevant rules which would attract to the facts of the present case is Rule (i) of the promotional rules for class IV to IX and XI which deals with the compartmental examination which envisages that if a student has failed in one subject in class 11th, he can be permitted to appear in the compartmental examination and then can be promoted to the next class subject to his securing the percentage of marks laid down in the said rules. The contention of the counsel for the Respondent is that the Petitioner in the present case having failed in mathematics subject and having absented himself in English paper could not be permitted to appear in

both the papers at the same time. Counsel also submits that the said rule relating to the compartmental examination will apply in the same manner uniformly.

5. I have heard learned Counsel for the parties.

6. Before I deal with the contention raised by counsel representing the parties, it would be appropriate to reproduce the relevant rules taken out from the instructions issued by the Respondent regarding evaluation and promotion of students from one class to another and the same are as under:

7. Student on leave on medical grounds, duly supported by a medical certificate in the comprehensive test/Annual Exam in one or more subjects shall be allowed to take test in the subject(s) (in which he/she had been on leave on medical grounds) along with the students taking the compartmental examination. For such subjects student will appear with compartmental candidates and the rules of compartment examination will be applicable (i.e. the student will have to obtain 33% marks in the examination without any grace marks or addition of terminal examination marks).

...

Instruction 7 only permits a student to appear in one or more subjects at the compartmental exam, if he or she could not appear in said subjects on medical grounds at his/her annual exam and where medical leave of such candidates duly supported by medical certificate. Hence, the aforesaid Instruction particularly deals with comprehensive test as well as annual exam and permits a student to appear in the subjects in which he was absent on medical grounds along with the students taking the compartmental examination.

Compartment Examination

If a student secures at least 20% marks in one failing subject in class XI and not more than two failing subjects in classes IX will be declared eligible for appearing at compartment examination and will be promoted to the next higher class if he/she secures 33% marks disregarding the terminal test (i.e. 1st term and II term test) marks.

OR

If a student gets at least 15% marks in one failing subject in class XI and not more than two failing subjects in class IX, he/she should get at least 40% marks in aggregate in other than failing and qualifying subjects, in order to become eligible for the compartment examination and will be promoted to the next higher class if he/she secures at least 33% marks disregarding the terminal test (i.e. 1st term and II term test) marks.

As per the rule reproduced above, if a student has secured at least 20% marks in one failing subject in class XI, then he will be declared eligible for appearing in compartmental exam and will be promoted to next higher class if such student

secures 33; marks in the examination disregarding the terminal test.

7. In the present case, the Petitioner has failed in his Mathematics exam as he had secured 17 marks in the annual examination. In the English subject also he was declared fail but it is not that the Petitioner had failed in the said subject but he failed to appear in English subject on account of medical reasons. So the fact situation of the present case is that the Petitioner has failed in one subject and in one subject he did not fail but absented himself due to medical reasons. Failure in a subject is entirely a different situation then non-appearance of a student on account of medical grounds. As per the rules however failure in two subjects will not entitle the candidate to appear in the compartment examination while the absenteeism in two or more papers on medical grounds will entitle the student to appear in such exam. It is quite surprising to know that the school has been interpreting the rule in the manner where the student however if fails in two subjects cannot be allowed to appear in the compartment examination, but if he absents himself due to medical reasons, he can be allowed to appear in both of them alongwith the candidates for compartmental examinations and the rules of compartmental examinations would apply to them. It is quite distressing to note that the said rules do not envisage a situation where a student can fail in one exam and can absent himself in the other due to medical reasons. As per the counsel for the Respondent, the said uniform practice to deal with such cases has been not to allow the student to appear in the two examinations. The two rules, one dealing with the absent students at par with the compartment students and the other wherein the student actually fails and appears in compartment examination are contradictory and ambiguous to say the least. If the interpretation of the school is accepted, it would mean that a student cannot fail and fall ill at the same time in an annual examination. This is a bizarre expectation as falling ill is not in ones hands and No. student would purposely fall ill and absent himself in an exam.

8. The only requirement laid down in the said Rule 7 is that the student must file his medical certificate in proof of his medical sickness. It is not in dispute that in the present case the Petitioner has submitted his medical certificate on time i.e. on 18.3.2011. The interest of the students has to be kept supreme while interpreting said instructions, if any obscurity is there in any of the instructions and where the instructions are quite ambiguous, the student cannot be made to suffer the brunt of the same. Therefore, this Court deems it appropriate that the petition deserves to be allowed and therefore it is also directed that the Respondent school shall re-frame the rules so that the students do not suffer due to ambiguity or confusion. The Respondent school is accordingly directed to allow the Petitioner to appear in both the subjects i.e. English and Mathematics in a test to be especially conducted for him. In case the Petitioner succeeds in both the subjects then he will be entitled to attend the classes of 12th standard after the declaration of his result. The compartmental examination shall be conducted by the Respondent within a period of three weeks from the date of this order. The result of the Petitioner shall also be declared by the school as early as

possible but not later than a period of two weeks after the date of conduct of the examinations. It is also made clear that in case the Petitioner qualifies the exams and is promoted to class 12th, then his attendance for class 12 shall be calculated from the next day from the date of declaration of his result. It is also made clear that this order is passed in the peculiar facts and circumstances of the case and in any event shall not be treated as a precedent.

9. Thus, the present petition is allowed in aforesaid terms.

10. Order be given DASTI