
(2007) 05 PAT CK 0068
In the Patna High Court
Case No : C.W.J.C. No. 4707 of 2007

Master Vedant Dhari Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

Citation : (2007) 05 PAT CK 0068

Judgement

V.N. Sinha, J.—Heard learned Counsel for the parties.

2. Petitioner, who has been detained in Class XI by the Principal of D.A.V. Public School, BSEB Colony, New Punaichak, Patna (hereinafter referred to as the School), has filed this writ petition praying inter alia to direct the Managing Committee and the Principal of the School, Respondent Nos. 2 and 3 to grant him promotion to Class XII for the Academic Session 2007-08 so as to enable him to appear in the Central Board of Secondary Education (hereinafter referred to as the CBSE) Examination to be held in March/ April, 2008. In this connection, it has been submitted that the petitioner passed All India Secondary School Examination, 2006 and obtained 92% marks and thereafter was admitted in the School on merit. Having pursued his studies in the School in a regular manner, he appeared in the first and second terminal Examination held in the month of August and December, 2006 in which he secured more than 60% marks. The annual examination was scheduled to be held between 9 to 20 March, 2007 but he could not appear in the annual examination as he fell ill on 4.3.2007 and was initially treated for viral fever. On 8.3.2007, he was diagnosed to be suffering from Mumps with Orchitis leading to painful movement and painful jaw movement with high fever as is evident from the certificate granted by the family Physician Dr. R.D. Singh dated 8.3.2007, Annexure-3 to this application. In the circumstances, father of the petitioner submitted an application dated 9.3.2007 to the Principal of the School, enclosing medical certificate pointing out that at the time of writing the application, petitioner was having 105 degree temperature, copy of the application was also given to the Class Teacher and is contained in Annexure-4 to this application. On account of the aforesaid illness,

petitioner remained absent during the entire period of the annual examination as he could not appear in any of the subjects/ papers and for failure to appear in the annual examination, he was detained in Class XI as is evident from the result dated 30.3.2007, Annexure-2. Later, when petitioner recovered from his illness, his father approached the Principal of the School and requested him to promote the petitioner in Class XII taking into account his result of the first and second terminal examination in which he had secured more than 60% marks or to permit him to appear in any special test to be conducted for the petitioner but the Principal declined to consider any such request on the ground that once the petitioner has not appeared in the annual examination, may be on the ground of illness, he cannot be promoted to Class XII and he has to remain in Class XI for one year more as is provided in the CBSE Examination Bye-Laws, which is even applicable to the Internal Examinations conducted by the School for promotion to Class X and XII. Petitioner thereafter filed the present writ petition.

3. This Court under orders dated 17.4.2007, issued notice to the Principal of the School, Respondent No. 3 directing the case to be heard again on 23.4.2007 but in the meanwhile petitioner was allowed to attend Class XII. In compliance of the said interim order, petitioner is presently attending Class XII as such, this Court is not inclined to go into the controversy which was raised by the parties as regards the implementation of the interim order by filing supplementary affidavit on behalf of the petitioner on 19.4.2007 and its reply by the Principal, Respondent No. 3.

4. The Principal, Respondent No. 3 has opposed the prayer made in the writ petition by filing counter affidavit, reply to supplementary affidavit of the petitioner, two affidavits, two supplementary counter affidavit, petition dated 1.5.2007 and additional affidavit and has raised the plea that the School is not a State within the meaning of Article 12 of the Constitution of India, as such, this writ petition should be dismissed as not maintainable. In support of such plea, reliance has been placed on the orders of the Division Bench dated 13.5.1994, passed in C.W.J.C. No. 1358 of 1994(R), Annexure-A to the counter affidavit in which it has been categorically held that the School is not a State within the meaning of Article 12 of the Constitution of India Even otherwise, it was submitted that in terms of the CBSE Examination Bye-Laws, which is also applicable to the internal examinations conducted by the School for promotion to Class X and XII, absence from appearing in the annual examination cannot be condoned on any grounds including the medical ground. In this connection reference was made to N.B. item No. 8 of the Annual Examination Programme, 2006-07 as contained in Annexure-B series to the counter affidavit, which specifically provided that there will be no re-examination in the event of absence on any ground, including the medical ground. In this connection, further reference was made to the averments made in paragraph Nos. 11 and 13 of the first counter affidavit, whereunder, it has been stated that the deponent, Principal has no means to verify the certificate issued by the doctor and none of the students of the School who has not appeared in the annual examination, has

ever been promoted to the next higher class. In the circumstances, this writ petition has no merit, which should be dismissed on merit as well.

5. During the hearing of the petition, learned Counsel for the petitioner submitted that the School may not be State within the meaning of Article 12 of the Constitution of India but as the school is engaged in teaching about 5400 students up to Class XII, it is certainly discharging public duties and the administrative action taken by the School can always be looked into by this Court in exercise of its powers contained in Article 226 of the Constitution of India. Reference in this connection was made to the following judgments of the Hon'ble Supreme Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , in the case of *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, , in the case of *Binny Ltd. and Another Vs. V. Sadasivan and Others*, and in the case of *State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others*, . With reference to the Division Bench order dated 13.5.1994, Annexure-A to the counter affidavit, it was submitted that thereunder Division Bench, having perused the transfer order of the petitioner of the said case, observed that the same was issued in regard to the internal management of the School and not in performance of any public duty, as such, has no application to the facts of the present case as in the said case allegations of mala fide were levelled against the Principal, Respondent No. 3 and not against the Director, who had issued transfer order but in the present case administrative action of Respondent No. 3 has been questioned as he has ignored the medical certificate and application dated 8/9.3.2007, Annexures-3 & 4 and has proceeded to detain the petitioner contrary to the provisions of the Examination Bye-Laws, which permit the Principal, Respondent No. 3 to grant exemption on medical grounds provided the student has 75% attendance to his credit. In this connection, reference is made to the Instruction No. 5 given to the Parents over Academic Performance Sheet, as contained in Annexure-2 to this application, which is quoted hereinbelow:

No exemption shall be allowed except on medical grounds of which timely written information and a medical certificate from a registered medical practitioner should be sent. Class attendance of 75% is an essential condition for promotion.

In this connection further reference is made to the averments made in paragraph 2 of the supplementary counter affidavit filed on behalf of Respondent No. 3, which is dated 7.5.2007. Relevant portion is quoted hereinbelow:

That as per the provisions of the Central Board of Secondary Education Rules, there is only provision for relaxation in internal examination under Clause-13.2 of Examination Bye-laws.

6. Counsel for the School reiterated the submissions made and noted above during the hearing of this application and further pointed out that if the petitioner was really ill with Mumps, which is a contagious disease, he should have

appeared in the School and the School would have provided him with a separate room where he could have taken his examination all alone but the petitioner deliberately remained absent from the examination during the entire period of examination i.e. 9, 13, 15, 17, 20 March, 2007, as such, since the Rule does not permit, it is not possible to promote the petitioner to Class XII.

7. Counsel for the Bihar State Electricity Board with reference to the averments made in the counter affidavit filed on behalf of the Board, submitted that while adjudicating the prayer made in the writ petition, this Court need not adjudicate the terms of the agreement between the School Management and the Board as it is admitted position that the School has been established basically for students, who are wards of the employees of the Board in which even wards of the Private individuals can also be admitted and they may complete their course. It has further been pointed out by the counsel for the Board that the case of the petitioner denying promotion from Class XI to XII was never considered by the Local Management Committee of the School.

8. Counsel for the CBSE, with reference to the Examination Bye-Laws, submitted that the same is primarily meant for Class X and XII Examination. The CBSE assesses a student on the basis of single examination conducted by it and as such, the previous performance of the student has no bearing at all in the final examination result. In the present case, petitioner being a student of Class XI, the School is the competent authority to take a decision as regards his promotion on medical grounds on the basis of his performance in the two terminals.

9. Having heard learned Counsel for the parties and having considered the pleadings filed by them, I am of the view that the School in question being engaged in imparting education from Primary level to the Senior Secondary level and affiliated with the CBSE and bound by the Examination Bye-Laws of the CBSE, is discharging public duty and thereby administrative action taken by it are amenable to the writ jurisdiction of this Court which will be considered on the touchstone of Article 14 of the Constitution of India and for such conclusion I place reliance on the judgment of the Hon'ble Supreme Court in the cases of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and relying on those decisions hold that the writ petition against the administrative action of the School detaining the petitioner in Class XI for his failure to appear in the annual examination is maintainable and the action taken shall be considered on the touchstone of Article 14 of the Constitution of India and if found arbitrary then shall be set aside.

10. Now coming to the facts of the present case, it appears, the petitioner became ill and information about his illness along with medical certificate dated 8.3.2007 was given to the Principal, Respondent No. 3 on 9.3.2007 through the letter of the father of the petitioner, which is dated 9.3.2007 and is addressed to the Principal of the School, copy whereof was also given to the Class Teacher and is contained in Annexure-4 to this application. Receipt of the letter dated 9.3.2007 along with medical certificate dated 8.3.2007 is not in dispute as in

paragraph 11 of the first counter affidavit dated 23.4.2007, it has only been stated that the Principal has no means to verify the correctness of the certificate issued by the doctor. In the additional affidavit filed by Respondent No. 3 on 8.5.2007, it has, however, been stated for the first time that the deponent, Principal was present in the School on 9.3.2007 but none met him on behalf of the petitioner on that date and even thereafter until 10.4.2007 when a telephonic command was issued to him to promote the petitioner in Class XII. No such statement was made in the counter affidavit. Even assuming such statement to be correct, all the personal information of the petitioner like his residential address, telephone number being available in the School records, steps could have been taken to instruct the petitioner that as and when his temperature is brought within the normal limits he should approach the School for appearing in the remaining examination. In the background of the aforesaid facts, I am of the view that no sooner the letter of the father of the petitioner dated 9.3.2007 giving information about the illness of the petitioner along with medical certificate of the doctor dated 8.3.2007 was received in the School, the same should have been considered by the Principal, Respondent No. 3 and if the Principal was of the view that the petitioner was feigning illness then appropriate direction to produce him before the School doctor should have been issued so as to verify the contents of the letter dated 9.3.2007 and certificate dated 8.3.2007 but the Principal having not taken such steps and having ignored the letter/certificate dated 9/8.3.2007, at this belated stage cannot be allowed to take the plea that he had no means to verify the correctness of the certificate issued by the doctor. Failure to consider the letter dated 9.3.2007 enclosing certificate of the family physician dated 8.3.2007 amounts to infracting Article 14 of the Constitution of India. The School had the advantage of assessing a student on the basis of two terminal/ annual examination whereas the CBSE assesses a student on the basis of single examination and that is why illness of the student is never taken into consideration by the CBSE. In the circumstances, at this stage, the certificate of the doctor has to be treated as genuine and the case of the petitioner for promotion to Class XII has to be considered by the Principal, Respondent No. 3 and the Local Management Committee, Respondent No. 2 in the light of the Instruction No. 5 given to the parents on the Academic Performance Sheet, Annexure-2 and the contents of paragraph 2 of supplementary counter affidavit of Respondent No. 3 dated 7.5.2007 which have already been quoted above, as there is no dispute that the petitioner has 75% Class attendance and the School has the advantage of assessing a student on the basis of his performance in two terminal/ Annual Examination. Necessary consideration in this regard must be made as early as possible, in any case before the cases of the other students of Class XII is forwarded to the CBSE for Registration for appearing in 2008 Examination.

11. This application is, accordingly, disposed of.