
(2008) 09 AHC CK 0006
In the Allahabad High Court

Milky Sodhi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Citation : (2008) 6 AWC 6325

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of the present writ petition, the petitioner is challenging the letter/order dated 1st October, 2007 passed by the Assistant Secretary, Council for the Indian School Certificate Examinations. Registered Office at Pragati House 3rd Floor 47-48, Nehru Place, New Delhi addressed to Seth Anand Ram Jaipuria School, 70 Cantonment, Kanpur directing him not to promote the petitioner to Class XII of ISC Examination for March, 2008.

2. Brief facts of the case, giving rise to the present petition are that prior to 18.10.2006, the petitioner was a student of St. George's College., Agra. She was transferred on 18.10.2006 to Seth Anand Rani Jaipuria School, 70 Cantonment, Kanpur. The petitioner joined the said school in the mid session of class 11th. The petitioner was promoted to Class XII by respondent No. 3 as per report card issued by the respondent No. 3 which is Annexure-3 to the writ petition. Thereafter the petitioner deposited the entire fees and studied in Class XII. On 10.04.2007, respondent No. 4 issued a letter to the respondent No. 3 and informed that the petitioner has joined the school in midway last session, as the father of the petitioner being a Government servant was transferred to Kanpur. By means of that letter, respondent No. 4 has asked for future course of action. The aforesaid letter was replied by respondent No. 3 on 17.04.2007 and asked the photocopies of certain documents from respondent No. 4. The respondent No. 3 issued three letters dated 3.5.2007, 26.7.2007 and 10.8.2007. The respondent No. 4 replied to the letter of respondent No. 3 on 22.8.2007 and

furnished the details sought by respondent No. 3. By impugned order dated 1st October, 2008, respondent No. 3 directed the respondent No. 4 not to promote the petitioner to class XII of ISC" examination for March, 2008.

3. It appears that vide letter dated 1st October, 2007, respondent No. 4 has informed the respondent No. 3 that the father of the petitioner was a Government servant and was transferred from Agra to Kanpur and also mentioned therein that as the admission was done very late in the mid session and there was difficulty for the admission for her adjustment, mere fore, on the humanitarian ground, her case may be considered positively, so that she may not loose academic year of her life. It appears that after the impugned order/letter dated 1.10.2007, the respondent No. 4 again wrote a letter dated 30.10.2007 to the respondent No. 3 and requested therein that not to penalize a child for no fault of her and again requested to take a sympathetic view to the request of respondent No. 4 to allow the petitioner in ISC Board Examination in March, 2008. Respondent No. 4 further wrote a letter dated 5.11.2007 to the respondent No. 3 and requested to permit the petitioner to appear in the examination, but when the respondent No. 3 could not respond to the aforesaid letter, the petitioner filed the writ petition. This Court vide order dated 27th February, 2008 permitted the petitioner provisionally to appear in Class XII examination and notices were issued to the respondents.

Counter and rejoinder affidavits have been exchanged between the parties.

4. Heard Sri Nipun Singh, learned Counsel for the petitioner and Sri J. Nagar, learned Counsel for the respondent No. 3.

With the consent of the learned Counsel for the parties, the writ petition is being disposed of finally.

5. Learned Counsel for the petitioner submitted that due to transfer of her father, the petitioner joined Seth Anand Ram Jaipuriya School, Kanpur in the mid session in class XI and could not appear in some of the papers in the second period order examination due to lack of proper preparations. However, she appeared in the final examination in all the subjects and has been promoted by the Principal of the College on the basis of the marks obtained in the final examination. It is submitted that as per Regulations and Syllabuses Booklet, the promotion of the candidate from class XI to class XII is the responsibility of the Head of the School and the decision of the Head of the College/School is final. Therefore, once the petitioner has been promoted by the Principal from Class XI to Class XII, respondent No. 3 cannot challenge the same and has no jurisdiction to direct the respondent No. 4 not to promote the petitioner from Class XI to Class XII. He further submitted that in view of the order dated 27th February, 2008, the petitioner appeared in Class XII examination and the respondents be directed to declare the result.

6. Sri J. Nagar, learned Counsel appearing on behalf of respondent No. 3 submitted that as per the guidelines for affiliation approved by the Council ?for

the Indian School Certificate Examination, New Delhi, which is Annexure-CA-2, the promotion criteria is provided in Clause 6. Clause 6(vi) of the said guidelines provide the promotion from Class XI to Class XII, which says that the promotion criteria as laid down by the Council for the Indian School Certificate Examination, under conditions for the award of an ISC (Class XII) pass certificate. He submitted that Regulation-D framed by the Council provides awards and conditions for awards, which provides that pass certificates will be awarded to candidates who at one and the same examination attain the pass standard in four or more subject which must include the subject English and the pass mark for each subject is 40 percent. He submitted that the petitioner could not obtain 40 percent marks in four subjects and, therefore, as per the Regulation, which is being followed for the criteria of promotion, the petitioner is not eligible to be promoted from Class XI to Class XII. He further submitted that the Guidelines and Regulations framed by the Council is necessary condition for the affiliation and also for issuing pass certificate by the Council for Class XII, unless the conditions are fulfilled, student cannot be permitted in the examination and cannot be issued pass certificate of Class XII. In support of his contention, he relied upon the Division Bench decision of the Orissa High Court in Writ Petition No. 14086 of 2006, Saurav Maharana v. Council for the Indian School Certificate Examination and Ors. decided on 18.09.2007, wherein similar question was involved.

7. Having heard the learned Counsel for the parties, I have given my anxious consideration to the rival submissions and perused the various documents annexed with the writ petition and the counter affidavit.

It will be useful to refer some of the Regulations which have been relied upon by the learned Counsel for the petitioner.

Clause 6(vi) Guidelines for promotion criteria by the Council for the Indian School Certificate Examination:

(vi) Classes XI and XII,

Promotion Criteria as laid down by the Counsel for the Indian School Certificate, under conditions for the award of an ISC (Class XII) pass certificate.

8. Regulation-D of the Regulation which pertains to "Awards and Conditions for Awards.

D. Awards and conditions for awards,

1. Pass Certificates will be awarded to candidates who at one and the same examination attain the pass standard in four or more subjects which must include the subject English.

Provided that no candidate except as otherwise exempted by the Counsel, shall be awarded to Pass Certificate unless in addition to fulfilling the conditions above, he has attained a pass grade in SUPW and Community Service as examined/

assessed internally by the School.

2. Supplementary Pass Certificates will be awarded to candidates who have obtained Pass Certificates and who appear in a subsequent examination and reach the pass standard in one or more subjects.

3. Statements of Marks will be issued to all candidates who are awarded Pass Certificates/Supplementary Pass Certificates.

The pass marks for each subject is 40%.

Regulation-B relates to Scheme of Examination which reads as follows:

1 (a). The syllabuses in English (Compulsory) and in Indian/Foreign/Classical Languages (Elective) have not been bifurcated. Questions will be set from the entire syllabus for the year- 12 examination.

(b) The Syllabuses in Environmental Education (Compulsory) and Elective subjects (except Indian Languages) are prescribed separately for Class XI and Class XII. The syllabuses prescribed for Class XI will be examined internally by the school and the syllabuses for Class XII will be examined externally by the Council.

2. The examination at the end of Class XI will be conducted by the schools and the promotion of candidates from Class XI to Class XII will be the responsibility of the Heads of the Schools and in this respect, the decision of the Head of the College/School is final.

3. The prescribed syllabus for Class XII will be examined externally by the Council on papers on the subject matter of the syllabus.

4. The result of the Indian School Certificate (Year-12) examination will be based on the external examination at the end of Class XII and on Socially Useful Productive Work and Community Service, evaluated internally by the School.

This provision relates to passing of Indian School Certificate Examination (Class-XII). As per this provision a candidate has to pass in one and the same examination in four or more subjects including English. He has also to attain pass grade in SUWP and Community Service as internally examined/Assessed by the School, unless the council exempts of such passing. There is nothing to show in this provision that these criteria are applicable for promotion from Class XI to Class XII, but as noted earlier as per Chapter IV (6) (vi) of the guidelines, the criteria for the award of an ISC Class XII) Pass Certificate is the criteria for promotion from Class XI to Class XII. As submitted by the learned Counsel for the petitioner. Clause B(2) Chapter-II of the Regulations prescribes the criteria for promotion from Class XI to Class XII. The said provision reads as follows:

The examination at the end of Class XI will be conducted by the schools and the promotion of candidates from Class XI to Class XII will be the responsibility of the Heads of the Schools and in this respect, the decision of the Head of the

College/School is final.

Clause-B(1)(b) of the same Chapter further envisages that the syllabuses prescribed for Class XI will be examined internally by the School and the Syllabuses for Class XII will be examined internally by the Council. So learned Counsel for the petitioner submitted that when examination of the students of Class XI is conducted by the School and Heads of the Schools are responsible for the same and the syllabuses for Class XI are to be examined internally by the School. Respondent No. 4 did not commit any illegality by promoting the petitioner from Class XI to Class XII, when he was satisfied that the petitioner would do well in ISC Examination. According to the Counsel for the petitioner Clause 1 of Chapter-II of the Regulations would not be applicable to promotion from Class XI to Class XII.

Admittedly, the petitioner has not secured more than 40 percent marks in four subjects including English in Class XI examination, therefore, in accordance to Clause 6 Chapter-IV of the Guidelines and the Regulations D which provides awards and conditions for awards, the petitioner should not Be promoted to Class XII.

8. A similar question came up for consideration before the Division Bench of the Orissa High Court in Writ Petition No. 14086 of 2006, Saurav Maharana v. Council for the Indian School Certificate Examination and others decided on 18.09.2007 wherein the Clause 6 Chapter IV of Guidelines and the Regulations have been examined in detail and it has been held as follows:

No doubt it is the responsibility of the Head of the School for promotion of a candidate from Class XI to Class XII and the syllabuses prescribed for Class XI are to be examined internally by the School but the same would not provide an unbridled authority to the head of the school to promote any student de hors of the Regulations and (Guidelines. The Council is not expected to give such authority to the head of the school. When Chapter IV (6)(vi) of the Guidelines provides that promotion criteria as laid down by the Council for the Indian School Certificate are also applicable for promotion from Class XI to Class XII, the promotion criteria laid down in clause-D, Chapter-II of the Regulations would be applicable as far as practicable for promotion from Class XI to Class XII. The provision in Regulations that the decision of the head of the school with regard to promotion of candidates from Class XI to Class XII is final does not mean that the same is sacrosanct and cannot be called in question by the Council. If promotion is duly given in accordance with the Regulations and the Guidelines such promotion cannot be called in question, otherwise the Council has every right to interfere in the promotion. So the submission of the learned Counsel for the petitioner cannot be sustainable.

9. Learned Counsel for the petitioner at last submitted that rightly or wrongly the petitioner was promoted from Class XI to Class XII. By an interim order of this Court she was allowed to appear in the final ISC Examination; so equity demands

that her result should be published. Considerations of equity cannot prevail over law and do not permit a court to pass an order contrary to law. This Court cannot direct the Council to disobey the Regulations and Guidelines made by the Council itself.

10. I entirely agree with the view taken by the Division Bench of the Orissa High Court and I propose to follow the same. The law laid down by the Division Bench of the Orissa High Court squarely covers the issue involved in the present case.

11. However, having regard to the facts and circumstances, I am of the view that the Principal of respondent No. 4 has illegally promoted the petitioner from Class XI to Class XII in violation of Regulation referred herein above and thus responsible for the harassment and irreparable loss to the petitioner. Thus, as an exemplary cost I direct that respondent No. 4 may bear the entire expenses of education till class XII and also pay a sum of Rs. 25,000/- (Twenty five thousand) to the petitioner.

12. In the result, writ petition fails and is, accordingly, dismissed with the aforesaid direction. Consequently, respondent No. 3 cannot be asked to declare the result of the petitioner.