

(2006) 12 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (C) No. 10350 of 2006

Neelankar Kumar

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 11-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Rules, 1973 — Rule 29, 32, 41

Citation : (2007) 136 DLT 388

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : B.K. Tamber Adv, for the Appellant; Latika Chaudhary and Rohit Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought a writ directing the respondent No. 1, Director of Education, to take appropriate action against the Principal, Gyan Bharti School, respondent No. 2, for the violation of terms of Circular No. F. DE/ School/Promotion Rules/ 9/ 2001/ 18663-20963 dated 8.9.2001 and also for issuance of direction to the respondent No. 2 to promote the petitioner to Class V or on the alternate comply with the instructions contained in circular number F. DE/school /promotion rules/9/2001/18663-20963.

2. Brief facts of the case are that the petitioner was a student of Class IV in the school of respondent No. 2. The petitioner contended that his result of Class IV was withheld and not declared by the respondents and Therefore he filed a writ petition bearing WP(C) No. 8840/2006 seeking declaration of the annual result for Class IV which was disposed off by order dated 31.5.2006 as during the course of proceedings the respondent handed over the Class IV result of the petitioner. The marks obtained by the petitioner in the IV class exam are as under:

Subject percentage English 16.66 Hindi 34.00 Mathematics 48.00 Env. Studies

35.33 Sanskrit 32.66 (Min. req. 25%)

3. The petitioner contended that despite having cleared four papers in accordance with Circular No. F. DE/school/promotion rules/9/2001/18663-20963 dated 8.9.2001 the petitioner was neither declared pass nor was he promoted to class V. The petitioner further contended that even if the petitioner was not eligible for promotion to 5th standard, still as per Clause 32 of the circular the petitioner was eligible for appearing in the compartmental examination.

4. Relying on Clause 29 of the circular the petitioner contended that in order to be promoted from Class IV to V the petitioner required 33% marks only in Hindi, Mathematics, General Science and Environment Studies and minimum of 25% marks in the third language i.e. Sanskrit. The petitioner further pointed out that he did not have the subject of General Science as a part of his curriculum and in the remaining subjects as mentioned in the circular, i.e. Hindi, Mathematics and Environmental Studies, the petitioner had secured 34%, 48% and 35.33% respectively which is above the statutory requirement of 33%. It is further asserted by the petitioner that in the third language i.e. Sanskrit the petitioner had secured a 33% mark which is above the statutory requirement of 25%. The petitioner Therefore claimed that he is entitled to be declared pass and be promoted to the Class V in terms of the aforesaid circular. The petitioner further asserted that upon declaration of result during the course of proceeding in W.P. (C) No. 8840/2006 the petitioner's father approached the respondent No. 2 for the admission of petitioner in terms of the circular however the respondent neither granted admission nor accepted the fees.

5. The petitioner further asserted that the circular bearing No. F. DE/school/promotion rules/9/2001/18663-20963 dated 8.9.2001 is binding on respondent No. 2 in terms of the circular No. DE. 5/61/06-Exam./370 issued by the respondent No. 1 dated 17.4.2006. The circular bearing No. DE. 5/61/06-Exam./370 dated 17.4.2006 is as under:

Sub: Minimum pass percentage of students in recognised public school.

Instance have been come to the notice of the Directorate of Education that some recognised un-aided schools are following/observing a different criteria for promotion of students from one class to the next, other than the one notified under rules of D.S.E.R. 1973. Attention is drawn to the circular issued in this regard vide No. F.DE/School/Promotion Rules/9/2001/18663-20963 dated 08-09-2001.

This is a serious violation and the practice should be stopped to avoid confusion that is prevailing among the students and their parents.

All DDE's of Districts are directed to keep a constant check on this issue.

6. It is further contended that the petitioner's father made several representations to respondent No. 2 for the admission of the petitioner to Class V in terms of the circular but the respondent No. 2 did not respond to the same.

The petitioner has, Therefore, impugned the action of the respondent No. 1 and 2 on the ground that the same is violative of fundamental and legal right to education of the petitioner and the conduct of the respondents are most illegal and arbitrary as the respondent No. 2 is under a mandatory duty to comply with the abovementioned circulars.

7. The respondent nos. 2 and 3 have contested the petition and have filed the counter affidavit of R.C. Shekhar, Manager, Gyan Bharti School, Saket, New Delhi, refuting the averments made in the petition. The respondents asserting that the petition has been filed to cover up the poor academic performance of the petitioner contended that the petitioner has sought promotion to next class despite securing 16.66% marks in English which reflects that the petitioner has to attain much learning in the said language which is the sole language of instruction in the respondents' school.

8. The respondent further contending that petitioner has misread Clause 29 of the circular and submitted that in terms of Clause 29 the petitioner for promotion to higher class was liable to secure at least 33% marks in all the subjects studied by him in Class IV except for the third language in which he was to secure 25% marks. Therefore since the petitioner studied English, Hindi, Mathematics and Environmental Studies and Sanskrit he was required to secure at least 33% marks in English, Hindi, Mathematics and Environmental Studies for promotion to Class V and that since the petitioner scored only 16.66% marks in English which happens to be one of the main subjects and primary language of instructions in the respondents school, Therefore, the petitioner was not promoted to Class V because of his poor academic performance in Class IV examination as he failed to secure the basic minimum marks in all the subjects, as required under Clause 29 of the said circular. The respondents further contended that in terms of Rule 32 for taking compartment examination the petitioner was required to secure an aggregate of 40% marks in the remaining subjects whereas the petitioner has scored only 37.49% marks. The respondent further asserted that granting promotion to an undeserving candidate will set a wrong precedent and pave way for other unmeritorious students taking advantage of their own poor results leading to an overall deterioration in the standards of education in the State of Delhi.

9. The respondent No. 1 has also filed the counter affidavit of Mrs Anita Setia, Deputy Director of Education, contending that in the day-to-day administration of a school with respect to discipline of the school vis-a-vis the students and teachers the respondent No. 1 does not interfere. The respondent No. 1 further submitted that it has made certain guidelines for proper administration of the school, which also includes assessment, evaluation and promotion of the students from one class to another which were circulated in all the schools for implementation. It was submitted that if the school authorities felt that a student who has less than qualifying marks for promotion to the next class and does not have the minimum level of learning and should repeat the same class and should

not be promoted, then in such a case the advice of the teachers should normally be accepted. It was asserted that if a child is weak in studies and has not studied then retaining him in the same class is in the interest of the child and such a decision should be left to the class teachers and that it should not be an emotional decision by the parents that the child should not be allowed to waste one-year.

10. Respondent No. 1, further submitted that as per the rules the students who are eligible to take comprehensive test, in order to be declared pass can be declared eligible for appearing at the compartment examination provided he/she had obtained at least 20% marks in one failing subject in class 11 and not more than two failing subjects for class IV to IX. In case, the candidate gets at least 15% marks in the failing subjects then he was required to get at least 40% marks in aggregate in the remaining subjects in order to become eligible for compartment examination. Such a student is eligible to appear in the subsequent examination to be held in the last week of April, before the summer vacation. If the student secures at least 33% marks in the subject in which he/she has taken the compartment examination, then disregarding the terminal test marks, he/she shall be declared successful in the compartment examination and promoted to the next higher class.

11. The petitioner has filed a rejoinder to the counter affidavit filed by respondent number 2 and 3 contending that as per the criteria prescribed by the government in exercise of its statutory powers, the petitioner is entitled to be declared pass and should be promoted to V class. The petitioner further contended that the respondent nos. 2 and 3 can have more stringent criteria than those prescribed in the circular dated 8.9.2001, provided that they have obtained prior approval of respondent No. 1 which has not been done in the present case.

12. The petitioner has also filed the rejoinder to the counter affidavit of respondent No. 1 denying the averments made therein and contending that the respondent No. 2 is required to strictly follow the instructions as laid down in the circular formulated under Rule 41 of Delhi School Education Rules, 1973 and that the same cannot be disregarded and construed contrary to its objective.

13. I have heard the counsel for the parties at length and perused the petition, counter affidavits, rejoinders and documents filed with them. The learned Counsel for the petitioner submitted that since "General Science" was not taught by the respondent No. 2 in Class IV Therefore for determining the eligibility for promotion to Class V, the same cannot be replaced with English, which is a language paper and cannot be classified as subject in terms of the rule, since the rules doesn't provide for the same. It was further contended that the rules as provided in the circular needs to be strictly complied with and that the same cannot be amended or modified by the respondent No. 2 and that if at all they want to make the rules stringent then it can be done only with the prior permission of respondent No. 1 which permission has not been sought by the

respondent No. 2.

14. The relevant provisions of the circular bearing No. No. F. DE/School/Promotion Rules/9/2001/18663-20963 which deals with instructions regarding assessment, evaluation, and promotion of the students from class I to IX and XI with effect from 2001 relied upon by the petitioner are as under:

CLAUSE - 29. Promotion Rules for Classes IV to IX and XI: In order to be declared "passed" at the end of the session, a student must secure at least 33% marks in each of the following subjects studied by him/her during the session subject to the condition that he/she secures 33% marks separately in theory and practical portions also. The promotion is also subject to the condition that a minimum of 25% of marks should be secured in the comprehensive test. In computing 33% of the marks, the benefit of a fraction will go to the credit of the student and such a student shall be declared "passed" and he/she shall be promoted to the next higher class.

Provided that in classes IV to VIII, a student will have to obtain a minimum of 25% marks in the third language in order to get promoted.

Provided further that in class IX, a student will have to obtain the required passing marks in any two of the three languages in order to get promoted.

(a) Classes IV and V :- (1) Hindi, (2) Mathematics, (3) General Science, (4) Environment Studies.

CLAUSE - 30 Promotion Rules for Classes IV to VIII: A student not eligible to be declared "passed" shall be declared "promoted" at the end of the session to the next higher class provided he/she is entitled for grace marks as admissible under instructions 34 of these rules.

CLAUSE - 32. Compartment Examination: A student who is eligible to take the comprehensive test in order to be declared "passed" can be declared eligible for appearing at the compartment examination, provided he/she has obtained at least 20% marks in one failing subject in Class XI and in not more than two failing subjects in Classes IV to IX. In case the candidate gets at least 15% marks in failing subject(s) (not more than two in Classes IV to IX), he should get at least 40% marks in aggregate in the remaining subjects in order to become eligible for the compartment examination. Such a student shall be eligible to appear in the subjects (s) at a subsequent examination to be held in the last week of April before the summer vacation and to be known as the "Compartment Examination". Of the student secures in the subjects(s) in which he/she has taken the compartment examination, at least 33% marks disregarding the terminal test marks, he/she shall be declared successful in the compartment examination and promoted to the next higher class.

CLASUE - 34. Grace Marks for Classes IV to VIII: Grace marks up to a maximum of 20 in all shall be awarded to a student to enable him/her to reach the minimum required 33% of marks in each of the subjects, subject to the condition

that a minimum of 25% of marks is secured in each subject at the comprehensive test as per Rule 29 to make him/her eligible for "promotion", provided he/she does not require more than 10 marks in a subject to come up to the minimum of 33% of marks in that subject. However, no grace marks shall be awarded to a student taking the compartment examination.

CLAUSE - 37.

All Recognised Unaided schools are required to comply with these instruction and no dilution of the criteria prescribed is permissible under any circumstances. If, however, a recognised Unaided school desires to have more stringent criteria than those prescribed in these instructions, it can do so provided it has sought and obtained the prior approval of the Director of Education. All such requests must reach the Office of the Director of Education by 30th April of the session at the latest.

CLAUSE -38.

All school, Government, Recognised Unaided and Aided, shall bring these instructions to the notice of the students and their parents/guardians immediately on the commencement of the session and, in any case, by 15th of April.

15. The eligibility criteria for promotion has been laid down after considering various factors including the minimal aptitude a student of a particular class acquires so that he is promoted to next class to learn more. If a student has not become conversant with whatsoever has been taught to him, he can not be promoted to the next class as he would be unable to learn more in the next class as learning in the next class is dependent on the minimal knowledge which a student is liable to acquire in his/her earlier class. The examination is conducted in order to ascertain whether a student has been able to imbibe and learn whatsoever has been taught to him and is competent to learn more on the basis of whatsoever has already been taught to him. If the rules have been framed laying down the criteria in order to ascertain the preparedness of a student for promotion to higher class, then such rules should be followed strictly and any interpretation given by the teachers and academicians who are concerned with the student and who are the best judge should be accepted unless there are malafides in detaining and not promoting him/her to the next class.

16. In terms of criteria detailed in the circular, in order to be eligible for promotion to Class V the petitioner was required to secure at least 33% marks each in all the four subjects which have been detailed in the circular and a minimum of 25% marks in the third language. The circular further broadly stipulates four subjects, namely Hindi, Mathematics, General Science and Environmental Studies which a student has to qualify along with third language in order to become eligible for promotion to the next class V. The circular, however, does not lay down that only four subjects as detailed in it, can be taught in class IV and no other subjects will be taught or studied by the

students. If that be so for promotion to class V a student has to qualify four subjects by scoring 33% marks in each subject and 25% marks in the third language.

17. The claim of the petitioner that he is eligible to be promoted to class V is based on the premise that English as subject is not stipulated in circular and Therefore, he is not liable to qualify the same despite scoring only 16.66% marks though English is also the medium of instruction in the school. Are the subjects stipulated in the circular all inclusive and no other subject could be taught in class IV" This has not been disputed by the petitioner that instead of General Science, the subject which he has studied is English. From the circular it can not be inferred that only those subjects detailed the circular could be taught in the school and no other subjects could be taught. Take a hypothetical case where out of four subjects detailed in the circular, three subjects are not offered and in their place three other subjects are offered to the students who study them, then according to the argument of the petitioner, and to be eligible to be promoted to next class V a student will only have to qualify that subject which is mentioned in the circular and he does not have to qualify other three subjects which were offered which he had studied. The interpretation of the petitioner of the circular is not in consonance with its object. According to respondent No. 2 a student has to qualify four subjects by scoring 33% marks in each subject in order to be eligible for promotion to class V. The construction of the rule as has been done by the petitioner will lead to many anomalous situations.

18. This has not been disputed that a student has to study four subjects compulsorily. If a student has to study four subjects compulsorily then he has to qualify them also. Besides the four subjects, a student also has to qualify another language, however, the percentage for qualification in other language is different which is 25%. If a student has taken a subject which could be offered by the school and which has been studied by such a student throughout the year, then such a student cannot contend that he does not have to qualify it. Such an submission is without any rational and logic in the facts and circumstances. The rule is not specific for determining the eligibility in case any subject other than those specified in the circular is not being taught in a particular class. In that event we need to construe the rule in such a way that the purpose and the objective behind enacting the rule is not defeated. The only construction which seems reasonable in the facts and circumstance is that the respondents were required to take into consideration the marks obtained in all four subject which were being taught by them and the third language and that a student will be entitled to promotion only if he has secured minimum 33% marks in all the four subjects and minimum 25% marks in the third language which condition has not been fulfilled by the petitioner as the petitioner has scored only 16.6% marks in the English paper which is one of the four subject which was being taught in Class IV.

19. It is no more rest integra that in academic matters the Courts should not

normally interfere or interpret the rules differently than as are interpreted by the authorities and such matters should be left to the experts in the field unless the same is arbitrary, unfair and unreasonable. No allegation of malafide or arbitrariness has been pleaded by the petitioner nor can the same be imputed to the respondents in the facts and circumstance of the case. Further, the rule that all the students who qualify English would be entitled for promotion to next class V has been uniformly applied to all the students. This Court will not substitute its own judgment, if any, contrary to the decision of the teachers of the school in the present facts and circumstances not to promote the petitioner in class V who has scored only 16.66% in English which is also the medium of instruction in the school. In *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, it was held that according to Wednesbury principle, while examining "reasonableness" of an administrative decision, the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bonafide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view. In *Om Kumar and Others Vs. Union of India*, it was held that the courts are confined to a secondary role and only has to see whether the administrator has acted illegally or has omitted relevant factors into consideration or whether his view is one which no reasonable person could have taken and if his action does not satisfy any of these conditions it is to be treated as arbitrary. The respondents have taken decision not to promote the petitioner to class V as he has failed in subject English which is one of the four subjects which he had studied throughout the year and which is also the medium of instruction in the school and Therefore, such a decision can not be termed arbitrary or has been arrived at by ignoring relevant factors and relying on irrelevant factors. Plea of the petitioner that English is a language paper and is not a subject is also untenable in the facts and circumstance and the petitioner has also not produced anything in support of this contention. A student is liable to score 25% marks in the third language only according to the circular relied on by the petitioner. A fortiori such a student is liable to qualify the first two language papers. The petitioner had English and Hindi as other two languages and Therefore, he had to qualify the subject of English also. Therefore, the plea of the petitioner that despite scoring 16.66% marks in the English which is also the medium of instruction in the school, he is entitled to be promoted to the class V is not tenable and can not be accepted.

20. The next contention of the petitioner is that if he had failed in subject English, he should have been placed in the category of Compartment and ought to have been allowed to appear in the compartment examination. Rule 32 of the circular clearly provides that for placing a student in the category of compartment, he has to score 40% marks in aggregate in the remaining papers. The petitioner has scored only 37.49% marks which is not disputed. Therefore

the petitioner could not be placed in the category of compartment nor could be allowed to take compartment examination as the petitioner does not fulfill the eligibility criteria as prescribed under Clause 32 of the circular.

21. In the totality of facts and circumstances, Therefore, it cannot be held that the respondents have flouted the promotion rules laid down under the circular bearing No. F. DE/school/promotion rules/9/2001/18663-20963 dated 8.9.2001 and the petitioner has not been promoted to the class V in violation of said circular. The petitioner was not entitled to be promoted to class V in accordance with the rules and the decision of the respondents can not be faulted in the facts and circumstances. There are Therefore, no grounds to exercise jurisdiction under Article 226 of the Constitution of India against the decision of the respondents. The writ petition is, Therefore, without any merit and it is dismissed. The interim order dated June 30th, 2006, Therefore, is also vacated, however, the respondents shall admit the petitioner in class IV and shall make every endeavor to educate him so that this year petitioner qualifies class IV examination in accordance with the norms of promotions. In the peculiar facts and circumstances, the attendance of the petitioner in class V be also treated as attendance of the petitioner in class IV. The parties are, however, left to bear their own costs in the facts and circumstances of the case.