
(1999) 02 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15877 of 1998

Nidhi Bharti and Others

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 22-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) 121 PLR 738

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : S.K.S. Bedi, for the Appellant; Harsh Aggarwal, for the Respondent

Judgement

Swatanter Kumar, J.—The petitioners, who are students of 11th Class have filed the present writ petitions under Articles 226/227 of the Constitution of India, for issuance of a direction of writ, for quashing the instructions No. 2 contained in Annexure P/1 annexed to this writ petition.

2. Practically, the prayer made in this petition is squarely covered by the judgment of this Court in the case Gaurav Mishra and Ors. v. C.B.S.E. and Ors., C.W.P. No. 14460 of 1998 decided on 19.2.1999.

3. However, learned Counsel appearing for the respondent-board has argued that in view of the bye-laws of 7.4 the very eligibility of the petitioners is questionable. It is contended by the learned Counsel that to be admitted to 11th Class, the candidate must pass the examination conducted by the Central Board of Secondary Education, Delhi of Class X. Thus, the instructions are hardly of any consequences because admission itself is prohibitory under the bye-laws. At the outset two facts must be noticed. Firstly, that upon declaration of the appropriate Clauses in the brochure, all the petitioners were given admission in the 11th Class, which had not been objected to by any authority and secondly, the students have studied in the 11th Class for full academic sessions which is not disputed.

4. Bye-law 7.4 has to be read and construed in conjunction with bye-laws 41.2 and 42 of same bye-laws. Under bye-law 41.2, it is provided as to what would be the eligibility before a candidate could be declared as a compartmental candidate instead of declaring him failed. Under bye-laws 42, a candidate is entitled to two compartment chances, one in July/August of the same year in which he has got compartment and the next in March/April, of the next year. "Pass criteria", as explained in bye-law 41.1, certainly makes a stipulation that a candidate must pass five subjects by securing 33% marks. It is only when a candidate fails to achieve the target prescribed under bye-law 41.1 that he would either be declared compartmental candidate or failed. A failed candidate obviously is not entitled to admission to 11th Class, as per the terms of the brochure issued by the government and various schools. On the other hand, admission to a compartmental candidate is duly specified in the brochure issued by the schools as well as by the government. As noticed in C.W.P. No. 14460 of 1998, the spirit of bye-laws 41.1 and 41.2. is that a candidate would be declared "failed" only after he is not able to clear the compartmental examination, even after taking two chances. The cumulative effect of these bye-laws is that a compartmental candidate saves his year and continue to pursue his next higher academic course as provided under these bye-laws, but would be liable to be declared failed and directed to re-appear in all subjects of the 10th Class, if he is not been able to clear the compartment examination in the second attempt.

5. Arguments advanced by the learned Counsel for the respondent-board does not places the case of the students of 11th Class at any different level than the case of the 12th Class candidates. The eligibility of admission can hardly be questioned because admittedly, it has been the practice in all the schools, which falls within the jurisdiction of this Court, to give admission in the 11th Class to the students, who have got compartment in the 10th Class. In fact, the brochure specifically provide for such admission and the consequences flowing therefrom.

6. For the reasons aforesated, I find no reason to take a different view in this writ petition than one taken by me in C.W.P. No. 14460 of 1998 titled Gaurav Mishra and Ors. v. C.B.S.E. and Ors. (supra).

7. Resultantly, this writ petition is accepted for the reasons stated in Gaurav Mishra's case, in addition to the aforesated reasons and the instructions No. 2 contained in Annexure P/1 issued by the respondent-board is hereby quashed. The petitioners-students would be entitled to issuance of roll number in accordance with law and would have the right to appear in the examination of 11th Class to be conducted by the respective schools.

8. However, there shall be no order as to costs.