

(2009) 05 KL CK 0001

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 13150 of 2009

Nikitha Basheer

APPELLANT

Vs

Central Board of Secondary Education

RESPONDENT

Date of Decision : 27-05-2009

Acts Referred:

Citation : (2009) 4 KLT 747

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : K. Ramakumar and R. Parthasarathy, for the Appellant; Devan Ramachandran, V.V. Asokan and Mayankutty Mather, for the Respondent

Final Decision : Allowed

Judgement

T.R. Rmchandran Nair, J.—The petitioner in this Writ Petition is a student in Standard XI of Bhavan's Vidya Mandir, Trichur. The main relief sought for in the Writ Petition is for a direction to the second respondent to issue Transfer Certificate showing her as having passed Class XI. The dispute herein has arisen in the following manner:

2. The petitioner had 81.2% marks in Standard X Examination with 82% marks in science subject. Upto Standard X she had been at the Our Own English High School, Dubai and for having better coaching in Standard XII and for preparations for the Entrance Examination, along with her mother she shifted her residence to Kerala and accordingly she was admitted in the present school. The petitioner has obtained more than 33% marks in the annual examination of Class XI which is more than the minimum of 33% prescribed by the Central Board of Secondary Education (C.B.S.E. in short), but still the school has issued Ext.P2 stating that she has failed in Class XI. She intends to have a Transfer Certificate for joining another school for Class XII. It is in these circumstances she has approached this Court seeking various reliefs.

3. The petitioner relies upon Ext.P3, viz. the Senior School Curriculum, 2009

prescribed by the C.B.S.E. providing for eligibility of candidates for admission in Class XI and for the Board Examination to be held in 2009. It is contended, based on the relevant clauses therein, that the C.B.S.E. allows a student who has obtained 33% marks, to be promoted in Class XII. It is submitted that the said pass marks is required in the final examination and the method adopted by the school to have minimum of 40% for all the class examinations, mid-term tests, etc. cannot be sustained, as the stipulations contained in Ext.P3 are binding on the authorities of the school, which is affiliated to the C.B.S.E.

4. On behalf of the second respondent, a counter affidavit and an additional counter affidavit have been filed. The contention mainly raised is that it is up to the school to determine the pass criteria for promotion and the prospectus as well as the report card have conveyed the requirement of aggregate of 40% marks in each subject for a pass and the student has an obligation to secure 33% marks on aggregate for all the examinations conducted for Class XI including mid-term tests and terminal examinations. Performance in the final examination alone is not sufficient. Such stipulations made by the school is binding on the student.

5. Heard Shri K. Ramakumar, learned Senior Counsel and Shri Parthasarathy for the petitioner, Shri Devan Ramachandran, learned Standing Counsel appearing for the C.B.S.E. and Shri Mayankutty Mather, learned Counsel appearing for the second respondent.

6. Learned Senior Counsel Shri K. Ramakumar invited my attention to paras. 1.12, 2.2, 2.5(ii) and 2.5(vi) of Ext.P3 to contend for the position that once a student has obtained 33% marks in Class XI Examination, he or she will be declared to have passed the said examination. The only requirement is that the pass marks in each subject of examination will be 33%. It is thus contended that the prescription of 40% as well as the requirement to have 33% aggregate marks combining all the class tests and terminal examinations, is beyond the scope of Ext.P3 and the curriculum issued by the C.B.S.E.... It is contended that the school cannot vary the terms and stipulations contained in the scheme prescribed by the C.B.S.E. and they have got a binding nature as far as the school and the students are concerned. It is submitted that if each schools are allowed to have separate standards, then that will play a havoc as far as the fate of the students are concerned. The prescriptions adopted by the C.B.S.E. alone are material and therefore a student who has obtained 33.% marks in all subjects in the final examination, has to be declared to have passed the examination and therefore the petitioner is entitled to be issued a Transfer Certificate accordingly.

7. To appreciate the said argument, the relevant paragraphs, viz. 1.4,1.7,1.12(i), 1.12(ii), 1.12(iii), 2.2(iv) and 2.5(vi) are extracted below:

1.4. No student shall be admitted or promoted to any subsequent higher class in any school unless he has completed the regular course of study of the class to

which he was admitted at the beginning of the academic session and has passed the examination at the end of the concerned academic session, qualifying him for promotion to the next higher class.

1.7. Admission to Class XII:

(i) No admission shall be taken in Class XII directly. Provided further that admission to Class XII in a school shall be open only to such a student who:

(a) has completed a regular course of study for Class XI; and

(b) has passed Class XI examination from a school affiliated to this Board.

(ii) A student who has completed a regular course of study for Class XI and has passed Class XI examination from an institution recognised by/affiliated to any recognised Board in India, other than this Board, can be admitted to a school only on transfer of the parent (s) or shifting of their families from one place to another, after procuring from the student the mark sheet and the Transfer Certificate duly countersigned by the Educational Authorities of the Board concerned. In case of such admissions the school would obtain post facto approval of the Board within one month of admission of the student.

1.12. (i) It is mandatory upon a school affiliated to Board to follow the Examination Bye Laws of the Board in toto.

(ii) No affiliated school shall endeavour to present the candidates who are not on its roll nor will it present the candidates of its unaffiliated branch/schools to any of the Board's Examinations.

(iii) If the Board has reasons to believe that an affiliated school is not following the Sub-sections (i) and (ii) of this Section, the Board will resort to penalties as deemed fit.

2.2(iv) The qualifying marks in each subject of external examination shall be 33% at Senior School Certificate Examination. However, at Senior School Certificate Examination, in a subject involving practical work, a candidate must obtain 33% marks in the theory and 33% marks in the practical separately in addition to 33% marks in aggregate, in order to qualify in that subject.

2.5(vi) In order to be declared as having passed the Class XI Examination a candidate shall obtain 33% marks in all the subjects. The pass marks in each subject of examination shall be 33%. In case of subject involving practical work a candidate must obtain 33% marks in theory and 33% in practical separately in addition to 33% marks in aggregate in order to qualify in that subject. (Rule 40.1)

8. My attention is also invited to para. 1.16 prohibiting detention of eligible candidates which also is extracted below:

1.16 Detaining of Eligible Candidates

In no case the Heads of affiliated schools shall detain eligible candidates from appearing at the examination of the Board.

9. Going by paras. 1.4 and 1.7, a student will have to complete the regular course of study and will have to pass the examination at the end of the concerned academic session. to qualify him for promotion to the next higher class. Paras. 1.7(a) and 1.7(b) are specific, in that for admission to Class XII, a student will have to complete a regular course of study for Class XI from a school affiliated to the Board. Therefore, it is obvious that the examination that is mentioned therein is the examination conducted after regular course of study, viz. the final terminate examination. There is no reference in these paragraphs about the compulsory pass in mid-term tests, terminal examination, etc. as otherwise they would have been specifically provided for in paras. 1.4 and 1.7. Sub-para (ii) of para 1.7 specifically provides that a student who has completed a regular course of study for Class XI and has passed Class XI examination from an institution recognised by/affiliated to any recognised Board in India, other than this Board, can be admitted to a school after procuring the mark sheet and the Transfer Certificate. The idea contained therein is also very clear. Therefore, it can be safely concluded that what is provided under these clauses is only that the student will have to complete the regular course of study and then appear for Class XI examination at the end of the academic session which will enable him to get admission in Class XII, if he obtains the prescribed percentage of 33.

10. Para. 1.12(i) provides that it is mandatory upon a school affiliated to Board to follow the Examination Bye Laws of the Board in toto. The effect of the same has thus to be understood to be mandatory. Therefore, the school is bound to follow the Examination Bye Laws prescribed by the C.B.S.E. and cannot have any choice in regard to adoption of their own method to provide a standard varying from the standards prescribed by the C.B.S.E.... This is more clear from sub para. (iii) of para. 1.12 which permits the Board to resort to penalties if the Board has reasons to believe that an affiliated school is not following the Sub-sections (i) and (ii) of that Section. Therefore, the argument raised by the second respondent that a school can prescribe a higher standard, viz. 40% herein, for a pass in the examinations and that 33% marks should be obtained in all the class tests, monthly tests and terminal examinations, cannot be sustained. Such freedom for an affiliated school is not prescribed by the Examination Bye Laws.

11. When we come to the relevant paragraphs in Ext.P3 providing for the scheme of examination, one thing is clear that what is provided for is only 33% marks as the qualifying marks to be obtained by a student in various examinations. Para 2.2(iv) provides that the qualifying marks in each subject of external examination shall be 33% at Senior School Certificate Examination. Of course, if it contains a theory and a practical, then 33% has to be obtained in aggregate and should obtain 33% marks in the theory and 33% marks in the practical separately in order to qualify for that subject. When we come to para 2.5(ii) also, the same idea is provided. It provides for pass criteria for Senior School

Certificate Examination. It is stated that "in order to be declared as having passed the examination, a candidate shall obtain a grade higher than E (i.e. at least 33% marks) in all the five subjects of external examination in the main or at the end of the compartmental examination. The pass marks in each subject of external examination shall be 33%. In case of a subject involving practical work a candidate must obtain 33% marks in theory and 33% marks in practical separately in addition to 33% marks in aggregate in order to qualify in that subject." These two are instances wherein the same standard is prescribed.

12. As far as the present case is concerned, the relevant clause is para.2.5(vi) which has already been extracted above. The only specification is that the candidate shall obtain 33% marks in all the subjects which is also the pass mark for each subject. Therefore, once the candidate has obtained 33% marks in aggregate after obtaining 33% marks in theory and 33% marks in practical separately, he/she has to be declared to have passed Class XI Examination. The examination mentioned can only be the final one in Class XI after completion of the course of study at the end of the academic session.

13. In this case, it is an admitted position that the student is having the aggregate of 33% marks and above in the final examination for Class XI. Therefore, when we apply para 2.5(vi), it is clear that the petitioner has passed the examination and is entitled to be declared to have passed the examination for Class XI.

14. Now, I will advert to the other contentions raised in the counter affidavit. It is the stand of the Principal that in classes IX and XI it is up to the school authorities to determine the pass criteria, except the pass percentage which is 33. Exts.R2(a) and R2(b) are relied upon to contend for the said position. Ext.R2(a) is the Examination Bye Laws of the year 2002 prescribed by the C.B.S.E. and Ext.R2(b) in the year 2006 is the amendment provided therein. 33% marks is the uniform criteria therein also. No reference is there to monthly tests and the like. The relevant clauses therein are in tune with the clauses referred to earlier. The school has provided a separate prospectus which is produced as Ext.R2(c). A reading of the prospectus shows that the only clause therein is under the heading "detention" which is extracted below:

Detention: Students whose overall performance at Mid-Term Tests, Terminal Examinations and Annual Examination of Class XI is not satisfactory will not be promoted to Class XII. Students, who do not show satisfactory progress in their academic performance in Class XII and those whose conduct is not satisfactory, will not be allowed to appear for the Board Examinations.

It is in Ext.R2(d), viz. Cumulative Progress Report under the heading "Note to the Parent" it is specified that the promotion of pupils to the higher standard is based on the total performance of all tests and examinations. A minimum pass mark of 40% is prescribed for theory and 30% for practicals with a further stipulation that "a pupil has to secure a minimum of 40% in all the other

subjects", and that satisfactory performance in the final examination alone will not qualify a pupil for promotion.

15. The question is whether the second respondent is entitled to have a higher standard than that is prescribed by the C.B.S.E.... In the light of the discussions already made above, and in the light of the specific provisions of Ext.P3 and in the light of para 1.12 stating that it is mandatory upon the school to follow the Examination Bye Laws of the Board in toto, it is evident that the provisions contained in the prospectus and the progress report cannot have an overriding effect. Therefore, the second respondent is bound by the provisions of Ext.P3. If that be so, they cannot insist that the student should obtain a minimum of 40% in all subjects and the combined performance in all the tests and examinations will have to be reckoned for the purpose of promotion to Standard XII.

16. It was vehemently contended by Sri. Mayankutty Mather, learned Counsel for the second respondent that what is prescribed by the C.B.S.E. at 33% is only the minimum and therefore there is nothing wrong in the school having higher pass marks. The said argument also cannot be accepted. The second respondent in his counter affidavit has pointed out that in certain other schools the same criteria as followed by them is prevalent and therefore there is nothing wrong in the school adopting a higher minimum. When the scheme of examination provided under Ext.P3 is binding on the school, they cannot fix a higher minimum than that is provided in Ext.P3. Otherwise, an eligible student who has obtained the minimum of 33% marks for promotion to Class XII can be denied promotion by the school by stipulating a higher standard. In the absence of any express provision in Ext.P3, conferring such a power to the School the contention can only be rejected. Apart from that, there is an object and purpose behind Ext.P3, in that it is a uniform formula adopted by the C.B.S.E. A uniform standard adopted by the C.B.S.E. will serve public interest and the interest of the student community. In that view of the matter, the argument that the school can have a higher minimum like the one adopted by them herein, cannot be sustained. As already held, it is only the result of the final examination of Class XI which alone is material. Of course, a school can have a monthly test or other tests during different spells. That will help the teachers to assess the performance of all students, so that the weak points could be analysed and guidance could be given to the individual students to improve in such areas. That is the clear idea of having mid-term tests either monthly or in three months or during other spells. But that will not have an impact as far as the question of promotion to Standard XII is concerned. The stipulation that the student should obtain the minimum 40% in all the monthly tests and other examinations, cannot therefore be accepted, especially since going by para. 1.4 and 1.7 of Ext.P3, a pass in the examination after completing a regular course of study for Class XI, will enable the student to get promotion to Class XII. Of course, the purpose of other internal examinations can be well appreciated but that cannot have a detrimental effect as far as the eligibility to get promotion to Class XII is concerned.

17. In fact, the curriculum and the scheme prescribed by the C.B.S.E. will show that they have fixed standards like required attendance and minimum marks, etc. uniformly. These are with the obvious purpose to have an All India pattern also, since Class X and Class XII Examinations are conducted on All India basis. When the standards prescribed by the C.B.S.E. ensures uniformity in the entire country, the said method alone can be followed by the school in a matter like this where a student is seeking promotion to Class XII. There is nothing to show that schools affiliated to C.B.S.E. have got freedom to fix different standards in such cases. Even in the prospectus no specific clauses have been provided to that effect except the provision for detention. In fact, the said provision under the heading "Detention" referring to mid-term tests, terminal examinations and annual examinations, has to be understood in the light of the specific clauses in Ext.P3. Otherwise, the provisions contained in Ext.P3 will be rendered otiose. The concept of detention has been frowned upon in academic circles and even under the scheme Ext.P3 in para 1.16 it is clearly stated that in no case the Heads of affiliated schools shall detain eligible candidates from appearing at the examination of the Board. Therefore, when a candidate who has obtained 33% marks is clearly an eligible candidate for promotion to Class XII, that candidate cannot be detained at all. In that view of the matter also, the stand taken by the second respondent cannot be accepted.

For all these reasons, the petitioner is entitled to succeed in this Writ Petition. It is declared that the requirement of 40% as minimum marks to be obtained by the petitioner and that too taking all mid-term tests and other terminal examinations, is clearly against the provisions of Ext.P3. As the petitioner has obtained more than the minimum of 33% marks which is prescribed by Ext.P3 for promotion to Class XII, it is declared that the petitioner is eligible for promotion. Therefore, the endorsement in Ext.P2 to the effect that the petitioner has failed in the examination in Class XI cannot be sustained and the same is quashed. The second respondent will issue fresh Progress Report showing that the petitioner has passed in Class XI and will also issue Transfer Certificate accordingly on production of a copy of this judgment. There will be a direction to the first respondent to see that the second respondent issues a fresh Progress Report and Transfer Certificate as directed above.

The Writ Petition is allowed as above. No costs.