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**(1998) 03 DEL CK 0109**  
**In the Delhi High Court**  
**Case No : C.W.P.No. 1193 of 1998**

Pooja Bhasin

APPELLANT

Vs

C.B.S.E. and Others

RESPONDENT

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**Date of Decision :** 12-03-1998

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1998) 3 AD 725 : (1998) 72 DLT 778 : (1998) 45 DRJ 168

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Mr. S.K. Khanna and Mr. Vinod Kumar, for the Appellant; Mr. Anil Kumar and Mr. Rahul Gupta, for the Respondent

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## Judgement

Dr. M.K. Sharma, J.—This is a writ petition filed by the petitioner praying for a direction to the respondents to allow the petitioner to appear in the Board Examination of Class XII commencing from 16th March, 1998 and also to hand over to the petitioner the Admit Card for such appearance.

2. The petitioner is a student of respondent No. 2 school. It is stated that the Admission Forms of all the students including the petitioner were forwarded by the School Authorities to the respondent No. 1 for allotment of Roll Numbers and issuance of Roll Number Cards. The petitioner received the Roll Number Card in the month of February, 1998, on the basis of which, she appeared in the practical examination held on 10th February, 1998. Subsequently, however the petitioner was informed on 27th February 1998, that the Admit Card could not be issued to the petitioner for the examination commencing from 16th March, 1998. After representing to the various authorities as also after service of a legal notice on the respondent No.2, the petitioner has filed the present writ petition praying for the aforesaid reliefs.

3. Both respondents 1 and 2 have contested this writ petition by filing counter affidavits which are on record. On perusal of the counter affidavits, I find that the respondents did not issue the Admit Card in favor of the petitioner as the

petitioner did not have the requisite attendance in Class XII as required under the Examination Bye-Laws framed in the year 1995 by the Central Board of Secondary Education, the respondent . 1.

4. In this context, provisions of Bye-Law 13 is relevant which states that a regular course of study means at least 75 percent attendance in the classes/ lectures held; counted from the day of commencing teaching of Class XII (relevant to the instance case) up to the first of the month preceding the month in which the examination of the Board commences. A reading of the aforesaid provision makes it apparent that a student could be allowed to appears in Class XII examination provided he has to his credit 75 percent of attendance in XII Class which is to be counted from the day of commencing teaching in Class XII up to 1st February, 1998, in view of examination being held in the month of March, 1998.

5. Bye-Law 14(ii) envisages that shortage up to 15 percent only may be condoned by the Chairman. It is, however, specifically provided in the said Bye-Law that cases of candidates with attendance below 60 percent in Class XII would not be considered for condensation.

6. In the present case the petitioner had about 46 percent of attendance when the same is computed from the month of April, 1997, the date when teaching commenced to 1st February; 1998. The petitioner, Therefore, did not have even 60 percent attendance in class so that provision of 14(ii) could be invoked by the Chairman of respondent No.1 on the recommendation of the respondent No.2. My attention is also drawn to the letter dated 9th March, 1998, which is annexed as Annexure - "4" to the counter affidavit filed by the respondent No.2 whereunder the respondent No.1 informed the respondent No.2 that the shortage in attendance in the case of the petitioner could not be condoned.

7. Learned Counsel for the petitioner submits before me that the petitioner was allowed to take a part of the examination as she had appeared in the practical examination held on 10th February, 1998. Learned Counsel for the petitioner submits that since the petitioner was allowed to take a part of the examination, the petitioner could not have been debarred from taking the rest of the examination. In support of his contention, the learned Counsel for the petitioner relies upon the decision of the Supreme Court in Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, . The learned Counsel has further stated that there is also violation of the provision Bye-Law 14(i) in view of the fact that the respondent No.2 in the light of the aforesaid provision was required to submit to the respondent No.1 at least three weeks before commencement of the examination regarding the shortage of attendance in the case of the petitioner. The aforesaid submission of the learned Counsel appears to be based on his assumption that the examination for Class XII started on 10th February, 1998. Learned Counsel for the petitioner further submits that withholding of the Admit Card by the respondents is illegal, particularly, in view of the fact that if the petitioner would have been intimated earlier about the aforesaid disability, she

could have applied for appearing in the examination as a private candidate under the provision of Bye-Law 17.

8. The Counsel for the petitioner further submits that the petitioner has a medical history and that fact should have been considered by the respondents before withholding the Admit Card. The Counsel for respondents 1 and 2 have placed reliance on the various statements made in the counter affidavits filed by each one of them and refuted all the submissions of the Counsel for the petitioner.

9. In the context of the submissions of the learned Counsel appearing for the parties let me consider the issues raised by the petitioner in the present writ petition.

10. It is true that the practical examination was held on 10th February, 1998. However, it appears from Annexure "P-2 which is a letter sent by the respondent No.2 to respondent No. 1 dated 27th February, 1998, that the regular classes of Class XII apparently started in the month of April, 1997 and continued till February, 1998. It is also apparent on a bare perusal of Bye-Law 13 that the petitioner was required to have to her credit at least 75 percent attendance in Class XII from April, 1997 to 1st February, 1998. In order to get the provisions of condensation as laid down in Clause 14(ii) invoked, 60 percent attendance is the minimum requirement in which case the Chairman of the respondent No.1 could have condoned the shortage by 15 percent. The petitioner admittedly could not fulfill the aforesaid criteria and, Therefore, the petitioner could not have demanded that she should be allowed to appear in the examination with the percentage of attendance in Class that she has.

11. The submission of the learned Counsel appearing for the petitioner that the examination had already started from 10th February, 1998 is devoid of merit as the copy of the Admit Card which is on record clear shows that the Admit Card is issued only for the examination starting from 16th March, 1998. Besides the classes admittedly continued up to the last day of February, 1998, whereas practical examination was held on 10th February, 1998. Again as per Bye-Law 13 regular course of study was "in any case to be continued up to 1st February, 1998 and, Therefore, period of three weeks as envisaged in Bye-Law 14(i) could not be computed to be before 10th February, 1998. Therefore, on a harmonious construction, I hold that the examination as envisaged under Clause 14(i) refers to the scheduled examination to be held from 16th March, 1998.

12. It is stated by the learned Counsel appearing for respondents 1 and 2 that the Admit Card were sent to the schools either in the month of January or in the month of February which, however, is to be issued to the candidate concerned only after final checking of the attendance as disclosed from the Attendance Register maintained by the School. Here also the Admit Card was issued in the name of the petitioner which is on record, but, the same could have been issued by the respondent No.2 to the petitioner only after checking her attendance as

disclosed from the said Register and subject to her fulfilling the requirement of Bye-Law 14. Since, the petitioner did not have the requisite percentage of attendance, the Admit Card was not issued to her.

13. I have also considered the ratio of the decision of the Supreme Court in *Shri Krishan (supra)* reliance on which is placed by the Counsel for the petitioner. In my considered opinion, the facts of the said Supreme Court decision are distinguishable. The Supreme Court in the said case approved the decision of the Madhya Pradesh High Court. The ratio of the decision of the Madhya Pradesh High Court is also extracted in paragraph 7 of the said judgment wherein, it was held that the scrutiny as to the requisite attendance of the candidates is required to be made before the Admission Cards were issued. The Supreme Court held that it is in complete agreement with the reasons given by the Madhya Pradesh High Court and the view taken by the learned Judges.

14. In the present case also, the scrutiny was made by the respondent No.2 as to the requisite attendance of the petitioner before the Admission Card was issued and since the petitioner did not have the requisite attendance, the same was not issued to the petitioner. This action on the part of the respondent NO.2 appears to be in consonance with the ratio of the decision of the Madhya Pradesh High Court reported in *Premji Bhai Ganesh Bhai Kshatriya Vs. Vice Chancellor, Ravishankar University, Raipur* reported in AIR 1967 MP and which decision has been approved by the Supreme Court in the aforesaid decision.

15. In the aforesaid decision of the Supreme Court relied upon the learned Counsel appearing for the petitioner, the Admission Form was submitted by the candidate wherein the numbers of attendance in class were disclosed which was overlooked by both the College as also by the University and in that context the Supreme Court held that the University could not deprive the petitioner from appearing in the examination. In the present case the candidates are not required to submit their forms individually to the school, but, the school concerned sends a list to the respondent No.1 which contains the names of the candidates and the subject in which the candidates are going to appear on the basis of which Admit Cards are sent to the school concerned.

16. The learned Counsel for the petitioner also relies upon a Division Bench judgment of this Court in *Subhi Khandelwal Vs. University of Delhi* and Another in L.P.A. 320/1997 disposed of on 13th February, 1998 reported in 71 (198) DLT 886. On perusal of the aforesaid decision it appears that in the said case there was a specific provision for submission and consideration of medical certificate produced by a candidate under Clause 2(9) of Ordinance VII which is referred to in paragraph 10. Considering the said specific provision, the decision was delivered. In the present Bye-Law, however, there is no specific provision for submission and consideration of any medical certificate providing benefit even though the candidate has less than 75 percent attendance in class. In my considered opinion, Bye-Law 17 has no application to the case of the petitioner and the provision that could be said to be application is Bye-Law 18 and not Bye-

Law 17. But in the present case, Bye-Law 18 is also not applicable as the petitioner does not fulfill the criteria laid down therein.

17. The contention of the learned Counsel for the petitioner that the factor of illness of the petitioner should have been considered by the respondents is also without any merit as the Bye-Laws categorically assert that 75 percent is the minimum requirement which also could be condoned to an extent of 15 percent only. In appropriate cases condensation, in my considered opinion, could be granted by the respondent No.1 to the extent of 15 percent only on relevant factors like illness etc., and Therefore, the aforesaid submission also cannot be accepted. The view that I have taken in the present is fortified by a Division Bench judgment of this Court in Kumari Preeti Srivastava Vs. Central Board of Secondary Education and Another decided on 23rd August, 1994.

18. Considering the aforesaid facts of the case, I find that this writ petition has no merit and the same is accordingly dismissed. No costs. Dasti.

Writ Petition dismissed.