
(2002) 01 CAL CK 0044
In the Calcutta High Court
Case No : Writ Petition No. 19523 (W) of 2001

Prasanjit Ghosh and Others

APPELLANT

Vs

West Bengal Board of Secondary Education and Others

RESPONDENT

Date of Decision : 29-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2002) 2 CALLT 261

Hon'ble Judges : Aloke Chakrabarti, J

Bench : Single Bench

Advocate : Subrata Bose and Gobinda Chowdhury, for the Appellant; B.R. Bhattacharjee and Tulsidas Maiti for the Respondent Nos. 1 to 4 and Suproakash Banerjee and Arati Sirkar for the Respondent Nos. 5 to 7, for the Respondent

Final Decision : Allowed

Judgement

A. Chakrabarti, J.—This writ petition was heard along with W.P. No. 19524 (W) of 2001. 47 students represented by their respective guardians filed two present writ petitions seeking relief of appearing in the Secondary Examination 2002. Facts relevant for disposal of the present proceedings are that the petitioners were students of Class IX of various schools and were unsuccessful to get promotion from class IX to Class X and were issued transfer certificates from their respective schools with endorsement "had not passed in Class IX." Apprehending loss of an academic year the respective guardians of the petitioners approached the teacher-in charge of Howrah Akshaya Sikshayatan who gave out to the guardians of the petitioners that if the petitioners succeed in admission test to be held by the school for admission in class X they can be admitted to the said school and would be allowed to appear in the Secondary Examination in the year 2002, if they pass the test examination. The petitioners appeared in the admission test and were successful and were accordingly admitted to the said school. After prosecute their study in class X the petitioners appeared in the test examination and were successful. Names of the petitioners

were forwarded by the school authorities to the West Bengal Board of Secondary Education (hereinafter referred to as the "Board") on July 30, 2001 and the entire amounts deposited by the respective petitioners towards registration fees were deposited by the school authorities with the Board which in its turn received the same amounts. The petitioner continued to pursue their study and appeared in the text examination as aforesaid in December, 2001. Suddenly on or about December 20, 2001 the petitioners were told by the school authorities that the prescribed forms were not supplied for being filled up by the petitioners and were informed by the respondent No. 7 that such refusal was by the Board in view of change in the rules.

2. Immediately the petitioners moved the present writ petition whereon an order was passed on December 28, 2001 by another learned single Judge during Winter Vacation of the High Court directing the Board to register the names of the petitioners and to issue their forms for the purpose of appearing in the ensuing Madhyamik Examination, 2002 which will be subject to the result of the writ petition.

3. Mr. Bikash Ranjan Bhattacharjee, learned counsel appearing for the respondent Nos. 1 to 4 agreed to final disposal of the writ petition at this stage without filing any affidavit-in-opposition though they did not admit the allegations made in the writ petition. Mr. Suproakash Banerjee, the learned counsel for school authority also agreed to final disposal of the writ petition on available materials and supported the contention of the petitioners.

4. Mr. Subrata Bose, learned counsel for the petitioners in this writ petition and Mr. Haradhan Banerjee, learned counsel for the writ petitioners in the connected matter, involving similar facts, placed reliance on the facts available in the respective writ petitions and contended that the petitioners were not at fault and there was no irregularity in their case and therefore, they are required to be permitted by the Board to appear in the ensuing Secondary Examination of 2002. Reliance was also placed on the circular dated January 19, 1987 on the basis of which the petitioners were assured by the school authorities as regards their rights to get admission in the new school in class X only on successful performance in the admission test and thereafter upon prosecuting study followed by successful performance in the test examination. Reliance was placed on the judgments in the cases of *Rajendra Prasad Mathur v. Karnataka University* reported in 1986 SCC 740, *A. Sudha v. University of Mysore* reported in 1987 (4) SCC 534, *Andhra Kesari Educational Society Vs. Director of School Education and Others*, and *West Bengal Board of Higher Secondary Education v. Tapan Kumar Das* reported in 1988 (II) CLJ 197. Mr. Haradhan Banerjee in support of such contention also placed reliance on the judgment in the cases of *Mandavkar Narendra Shankar and Others Vs. The Maharashtra State Board of Secondary and Higher Secondary Education and Others*, and *Maharishi Dayanand University v. M.L.R. Saraswati College of Education* reported in : (2000)7SCC746 . Further reference was made on the judgments in the cases of *Sanatan Gauda Vs.*

Berhampur University and others, , Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, and Jaisree Pal and others Vs. State of West Bengal and others, in support of a contention that as the Board accepted the money deposited by the school authorities for registration they are estopped from denying permission to the petitioners for appearing in the said examination.

5. Mr. Suproakash Banerjee, learned counsel for the school authorities supported the contentions of the petitioners.

6. Mr. Bikash Ranjan Bhattacharjee, learned counsel for the Board contended that the prevailing policy as contained in the relevant circular does not permit admission in class X without being promoted from Class IX. It is stated that admission test held by the school authorities is not permissible and that cannot substitute the requirements of passing class IX for admission in class X. It is also contended that mere deposit of registration fees does not create a right nor estops the respondents from scrutinising the matter and raising objection on detection of the truth. In support of his contention, Mr. Bhattacharjee relied on the Judgments in the cases of Dr. Sadhna Devi and others Vs. State of U.P. and others, . C.B.S.E. and Another Vs. P. Sunil Kumar and Others, , Central Board of Secondary Education Vs. Nikhil Gulati and Another, . University of Calcutta v. Soumtk Chalcrabarty reported in 1995(1) CHN 477 and University of Calcutta v. Amit Jalan reported in 2000(1) CHN 668.

7. After hearing the aforesaid contentions, I find that the petitioners who were students after they failed to be promoted from class IX to Class X, were admitted by the respondent school authorities in class X making out a representation that in view of the policy of the Board as contained in the circular dated January 19, 1987 that such admission is permissible provided the petitioners succeed in an admission test. Petitioners were represented by the school authorities that under the said policy", transfer from class IX to Class X is permissible provided they succeed in admission test. School authorities have not disputed such contention of the petitioners. On behalf of the petitioners it is stated that such representation by the school authorities is binding on the Board as school authorities are the agent of the Board as held in the case of Kumar M. N. Shankar (supra). I find that this law has been explained in the case of Soumik Chakrabarty (supra) holding a principle of law following which I find that in this case, Board will not be bound by such action of the school authorities so long they do not act in accordance with law.

8, With regard to the validity of admission of the petitioners In the respondent's school, it is apparent that the petitioners acted on the representation of the school authorities that such admission upon successful performance in admission test, is valid in view of the policy of the Board contained in the circular dated January 19, 1987. It is true that the circular dated January 19, 1987 does not contain a specific bar of transfer from class IX to Class X on successful performance in the admission test. Therefore, when the petitioners acted on such representation by school authorities which has been admitted by the school

authorities in this proceeding at the time of hearing, it does not appear that the petitioners committed any wrong. Admittedly they have participated in the admission test and succeeded there. Thereafter they have pursued their study in class X and they have passed in test examination also. They have deposited the fees for ensuing secondary examination of 2002. But, in any event, strictly speaking no transfer can be contemplated from class IX to class X as it will be a case of promotion. Whenever a transfer is contemplated the same should be from the same level and therefore, a transfer in academic Institutions can be thought of to the same class only. Therefore, school authorities were not right in acting in the manner as they have acted in the present case by making a representation to the petitioners so that the petitioners take admission in the said school.

9. Question arises as to the relief as claimed by the petitioners in such factual background. On behalf of the petitioners law has been cited in the cases of Rajendra Prasad Mathur (supra) followed by A, Sudha (supra) and Andhra Kesari Educational Society (supra) decided by the apex Court. In the case of Rajendra Prasad Mathur. It was held that in a case of admission in affiliated Engineering College students not duly qualified were admitted and the facts appeared that the blame were upon the College in respect of Irregular admission and therefore, students are not to suffer for the sin of the College. Same principle was followed in the other cases as aforesaid. Similarly in case of unlawfully admitted students already allowed to appear in examination, results were directed to be declared in the case of Maharishi Dayanand University (supra) to save career of the students. Same principle was followed in the case of Sanatan Gouda (supra), Srt Krtshan (supra) and Jaishree Pal (supra). On behalf of the respondents, their learned counsel has relied on the judgment in the case of Dr. Sadhna Debt (supra), P. Sunil Kumar (supra) and Ntkhtl Gulatt (supra) for the purpose of contending that in case of Irregular admission no relief should be granted to the candidates. On consideration of the law thus cited by the opposite parties, I find that in the case of Dr. Sadhna Debt question came for consideration was whether reservation of seats for reserved quota prescribing lower qualifying marks is permissible or not in the case of admission to post graduate medical course. The said principle considering the requirement in case of higher studies does not apply in the present case. In the case of P. Sunil Kumar (supra) the practice of allowing the students to appear provisionally in examination and then regularising the same taking a sympathetic view was depricaled. In the case of Nikhil Gulati (supra), the facts are not available from the Judgment and only observation has been made that sympathetic view not being preceedent for Ineligible students for appearing in Board Examination, is not appreciated. Therefore, it seems that in the present facts the law cited by the learned counsel for the respondents do not apply but the judgment relied on by the learned counsel for the petitioners are in similar circumstances as involved in the present case. Here also I find that the petitioners were admitted on a wrong representation made by the school authorities and they have prosecuted their

studies for one year and have succeeded in the test examination also. At the late stage of appearance in the final examination refusal has been Intimated by the Board. Therefore. In such circumstances, when admittedly the petitioners are not at fault and they have acted on the representation made by the school authorities relying on the circular issued by the Board, the petitioners should be allowed to appear in the examination. But with regard to school authorities admittedly they have acted in a manner which requires scrutiny and strong action by the Board. Such action of the school authorities has jeopardised the career of the several students and I do not find any justification for the school authorities to made a representation that a transfer from a lower class to a higher class is permissible only on successful performance in an admission test. As the admission of the petitioners were earlier than the circular dated June 6, 2000 the same even if not applicable but still then transfer from Class IX to Class X cannot be held acceptable keeping in mind the academic structure prescribed all through. The contention of the petitioners relying on the circular prescribing integrated course for Class IX and X also does not support the above contention as the same did not cover the question of promotion form Class IX to Class X and our academic courses require promotion from each class to a next higher class for the purpose of admission in the said higher class. If the School authorities are found to have violated the rules of the Board tn the matter of admission of the petitioners, appropriate penal action is required to be taken by the Board authorities.

10. In view of the aforesaid findings, the writ petition is allowed. The respondents board authorities are directed to register the names of the petitioners and to issue them requisite forms and complete all formalities for the purpose of appearing in the ensuing Madhyanilk Examination, 2002 and will allow them to appear in the said examination and declare their results. The authorities also will allow the petitioners to appear in additional papers which have taken place already. The authorities of the Board will also hold appropriate enquiry against the School authorities giving them opportunity of hearing and will take appropriate action on the basis of findings in such enquiry within a period of three months from today.

Let plain copies of the operative part of this order, duly countersigned by the Assistant Registrar (Court) be handed over to the learned counsel for the parties on usual undertaking.