

(2005) 08 RAJ CK 0054
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4928 of 2005

Pulkit Pandey

APPELLANT

Vs

Central Board of Secondary Education and Another

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Citation : (2005) 4 RLW 2692 : (2005) 4 WLC 359

Hon'ble Judges : Gyan Sudha Mishra, J

Bench : Single Bench

Advocate : Jitendra Mitruka, for the Appellant; R.P. Singh and J.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Gyan Sudha Misra, J.—All the petitioners herein are the examinees of Class-X Central Board of Secondary Education (CBSE for short) who have moved this Court by filing these writ petitions for challenging the action of the CBSE which has withheld their results on the ground that the students/petitioners herein had not passed out the qualifying examination before entering into Class-X due to which they were ineligible to appear in the Class- X Board examination. As per the CBSE Regulation, students are eligible to seek admission in Class-X only if they have passed out Class-IX after which alone they could appear in the Board examination conducted by the CBSE.

2. It appears that the petitioners had been studying in different schools in Class-IX and as per school record they were declared fail since they had not secured the required percentage of marks which would have held them eligible to seek admission in Class-X.

3. To clarify the position further, it may be stated that different schools have different criteria in regard to the percentage of marks which holds the students eligible to pass Class-IX examination-meaning thereby that in some schools the minimum pass percentage for Class-IX is 45% marks whereas in other schools it

is 48% marks, so and so forth. The petitioners having failed to secure the required percentage of marks as per the percentage fixed by their schools, did not clear Class-IX examination and therefore, they thought it proper to change their schools and some of the petitioners sought admission in Indo- Bharat International Public School while some others sought admission in S.V. Public School since the pass percentage for Class-IX in these schools was lower than the other schools. After seeking admission in Class-X they continued to study there and after completing the session for Class-X they also filled-up the examination forms and deposited fee for Class-X which was to be conducted by the CBSE. The application forms of the students/petitioners were duly accepted by the respondent-CBSE after which they also appeared in all the papers of the examination for Class-X. However, when the results of Class-X were declared, the results of these petitioners were withheld.

4. On enquiry, it was communicated to the petitioners that their results for Class-X has been withheld since they were not eligible to appear in the Board examination of Class-X as they had not passed out Class-IX examination which was the qualifying examination for Class-X due to which they were not eligible to seek admission in Class-X at all. This obviously had a serious consequence on the fate of the petitioners educational career and therefore, they have filed all these 22 writ petitions challenging the action of CBSE with a prayer that the CBSE should be directed to declare their results for Class-X examination.

5. The counsel for the parties were heard at some length at the admission stage itself, considering the impact of pendency of the results and the counsel for the CBSE Mr. R.P. Singh who vehemently supported the stand of the CBSE submitted that if the petitioners/students had failed to clear the qualifying examination which was Class-IX, then merely because they had studied for the whole session in Class-X and CBSE had also permitted them to appear in the Board examination of Class-X, the same cannot be a reason enough to declare their results, if it could be detected later that they had sought admission surreptitiously in another school even after failing in the previous school. This was clearly a connivance between the students and the school authorities which had permitted them to seek admission in Class-X even though they had failed to clear Class-IX examination in their previous school. According to learned Counsel of the CBSE although this lacuna had been detected at a later stage, this could not be a reason to condone this demeaning act on the part of the petitioners/students and the school which illegally permitted the students to seek admission in Class-X knowingly well that they had failed in the previous school.

6. After heated arguments and counter arguments of the counsel for the petitioners and the respondent-school which had granted admission to the petitioners in their schools, as also the counsel for the CBSE, it could be noticed that the CBSE in the first place raised objection about the eligibility of the students to appear in the examination after they studied the whole year and the CBSE itself accepted the fees and forms of the students and only after they

appeared in the entire papers, their results were withheld. For the sake of equity, the counsel for the CBSE was directed to produce the result sheets of the petitioners in a sealed cover in order to determine whether the results will ensure any benefit in favour of the petitioners so as to give them a cause to press these writ petitions. On perusal of the result sheet which was produced in a sealed cover and was opened in Court, it could be noticed that all the petitioners have cleared the Class-X examination except a few who have been permitted to take compartmental examination of the papers which they could not clear in the annual Board examination.

7. In this scenario, the question cropped up whether it was permissible for the CBSE to raise a dispute questioning the petitioners to sit in the Class-X Board examination after they had completed the session and also appeared in the Board's examination and the Board had also accepted their fee and from which it could be reasonably inferred that their eligibility had been checked by the Board. Learned Counsel for the CBSE sought to justify the action of the CBSE on the plea that the CBSE is not equipped with any system or mechanism by which this kind of illegal activity on the part of the schools and the students could be checked within a reasonable time and whenever any activity of this nature is brought to the notice of the Board, suitable action is taken which includes withholding of results also. But on perusal of the annexures to this writ petition which were referred by the counsel for the parties, it appears that there had been a regular correspondence between the School as also the CBSE in this regard and the CBSE had issued a letter to the school in the mid of the session that although some of the students named therein were eligible to appear, others who were also named therein were not; but what transpired between the Board and the school thereafter is not clear as also as to what action was taken against the schools and the affected students/petitioners before they were permitted to appear in the examination of Class-X. It is hardly convincing and hard to accept the contention that the Board is not equipped with any agency through which this kind of check can be conducted within a reasonable time as in my view if the Board had been really sincere about its action, it was expected to check the credentials of the school and the students even before the admissions were granted to the petitioners/students or atleast before accepting their fees and forms and issuance of their admit cards since the Board had entered into a correspondence with the school in this regard prior to permitting the students to appear, by accepting their fee and examination forms. This action appears to have been done only after they were permitted to appear in the entire examination but with-held their results so as to give them a shock treatment instead of taking timely action. Nevertheless, this Court found substance in the contention of learned Counsel for the CBSE Mr. R.P. Singh, who submitted that if a particular illegal action of an institution or a person who indulges in mal-practice, dupes the school authorities and the CBSE checks it at a later stage, then whether such action is not fit to be dealt with a stringent action so as to allow it to reach to a logical conclusion.

8. It is no doubt true that any demeaning deceitful or an illegal act of a person or an institution is not fit to be condoned at any stage of its detection as it can surely and adequately be dealt with as and when it is brought to the notice of the competent authorities, but in the process the fall out of the belated action and its consequence has to be weighted after taking into account the totality of the circumstances in order to avoid miscarriage of justice in any manner as also to test the bonafide of the authorities whether the action is justified or motivated and is done in a casual or cavalier manner.

9. In the instant matter, it was brought to the notice of this Court by one of the counsel for the school namely-SV Public School which had granted admission to some of the petitioners in Class-X that the pass percentage for Class-IX as per CBSE Regulation is only 33% and there is no uniform criterion regarding pass percentage adopted by all the schools for the students while clearing Class-IX examination, as it was pointed out that in some schools-the pass percentage is 45% while in some other schools it is 48% and the schools in question followed the CBSE regulation which has laid down only 33% as the minimum percentage for passing out Class-IX which position was fairly accepted even by the counsel for the CBSE.

10. According to the counsel for the petitioners all the petitioners had secured 33% even in their previous school of which the counsel for the CBSE is not aware, but there is no material before this Court received from any quarter indicating that the petitioners had not secured 33% marks in their previous school in absence of which it is not possible for this Court to infer that although they had secured 33% marks in the previous schools, they were declared fail in Class-IX contrary to the CBSE regulation. Therefore, it will have to be presumed that the petitioners had secured atleast 33% marks in Class-IX before joining the new school which is the required pass percentage for Class-IX after which they sought admission into the new school. Therefore, it cannot be held that they were ineligible to seek admission in Class-X examination in the new schools which held them eligible to appear in Class-X Board. Besides this, it transpires, as already stated hereinbefore, that the CBSE did not check the credentials of the schools and the petitioners/students for the whole year and could wake up to the whole situation only after the petitioners appeared in the examination by withholding their results.

11. In my view if the students indulged into an illegal action it should have first of all checked the credentials of the school and the students thereafter atleast within a reasonable time which the CBSE not only failed to do but also accepted the fees and forms of the petitioners and permitted them to appear in the examination for which admit cards were also issued. The CBSE suddenly woke up from its slumber only after completion of the examination just at the threshold of declaration of the results questioning the eligibility of the petitioners to seek admission in another school which action certainly points finger to the authorities who were expected to take timely action. The reason to insist on the

time limit for such action is very obvious for if the CBSE had objected to the admission of the petitioners in the new school at the relevant time, they could have been directed to repeat the same class in the new school, but this was done after they have cleared the Class-X Board examination. The glaring fact further remains, that as per the CBSE regulation, the pass percentage for Class IX is 33% and if the petitioners had secured atleast 33% marks in the previous school, there is no reason available for the CBSE to withhold the results of the petitioners in the name of probity.

12. In view of the entire discussion, the CBSE is directed to formally declare the results of all these petitioners and if some of the petitioners/students have not cleared the entire papers of the Class-X Board examination, they obviously will have to reappear in compartmental examination for the due papers in order to clear all the subjects.

13. For the aforesaid reasons, all the writ petitions stand allowed and disposed of.