

(2000) 09 AHC CK 0003
In the Allahabad High Court
Case No : C.M.W.P. No. 30948 of 2000

Rajeev Kumar Singh

APPELLANT

Vs

Secretary, U.P. Board of High School and Intermediate
Education, Allahabad and others

RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:

Uttar Pradesh Education Code, 1972 — Rule 119

Uttar Pradesh Intermediate Examination Regulations, 1921 — Regulation 20

Citation : (2000) 4 AWC 3178 : (2000) 3 UPLBEC 2726 : (2000) 3 UPLBEC 2427

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Ashwani Kumar Mishra, for the Appellant; S.C. and Pradeep Saxena, for the Respondent

Judgement

V. M. Sahai, J.—The only question that arises for consideration in this petition filed by a student of class XI is whether the Principal was justified in denying promotion to him to class XII because he failed to secure 25% marks in Physics theory even though he secured 40% marks in every subject and in aggregate as well.

2. The petitioner, was a regular student of class XI of Manohar Bhushan Inter College, Bareilly. In home examination of class XI, Sessions 1999-2000, he was declared failed. Annual report card was issued to him on 15.5.2000. He had secured 240 out of 500 marks. He had secured 40% marks in each subject individually and in aggregate as well. But he was not promoted to class XII as his marks in half-yearly examination were very poor. In the combined result of half-yearly and annual examination, he could not secure 33% marks in aggregate. He had also failed in English and Physics. According to the counter-affidavit, he was failed by 2 marks in English and 12 marks in Physics. He was not promoted as even after giving benefit of 10 grace marks which is the maximum, he fell short by 4 marks. A representation was made to the Principal on 6.6.2000 for promoting him to class XII. It was not decided. The petitioner challenged his

result by this petition and claimed promotion to class XII. This Court on 20.7.2000 directed the Principal/ respondent No. 3 to decide the representation dated 6.6.2000. By order dated 3.8.2000 the representation has been rejected by the Principal. He held that a student who appeared both in half-yearly and annual examination, but was not entitled to be promoted even after award of grace marks to the combined total, then such a student could be promoted on marks awarded in annual examination, but in that case, it was mandatory for such candidate to secure 33% in each subject and 40% in aggregate. He further held that in such circumstances, a student would not be entitled to any grace marks as was clear from paragraph 119 (Kha) of the U. P. Intermediate Examination Regulation, 1921. And the student must pass both in theory and practical as provided by the Regulations of Board of High School and Intermediate Education, U. P., Allahabad (in brief Board). He held that since the petitioner has failed in Physics theory it was not possible to declare him pass.

3. I have heard Sri Ashwani Kumar Mishra, learned counsel for the petitioner and Sri R. D. Agrawal, learned counsel appearing for respondent No. 3 and Sri Abhinava Upadhyaya, learned standing counsel for respondent Nos. 1 and 2.

4. The learned counsel for the petitioner urged that the petitioner has secured in the annual examination 40% marks in all the subjects and also in aggregate, therefore, he was entitled to be promoted, as per amended Rule 119 (kha) of the Education Code. He further urged that even If result of half-yearly examination was considered the petitioner was entitled for grace marks in Physics theory paper. The learned counsel submitted that the representation has been illegally rejected by the Principal on the ground that Regulations of the Board applies to home examination of class XI.

5. On the other hand, the learned counsel for the Principal supported the order dated 3.8.2000 and urged that under the Regulations of Board, the petitioner was required to pass separately in theory and practical examinations of Physics. He further urged that the petitioner could be promoted to class XII if on the basis of total marks secured in half-yearly and annual examinations he had obtained 33% marks in each subject and 40% in aggregate. The learned counsel submitted that petitioner has failed in English and Physics, in the combined result of class XI, therefore, he could not be promoted to class XII. The learned standing counsel has supported the arguments of the respondent No. 3 and has produced the Regulations of the Board and amendment made on 16.2.2000 in Rule 119 (kha) of the Education Code.

6. The question is whether a student who has failed in half-yearly examination of class XI can be promoted to class XII, if he secured 40% marks in annual examination in each subject as well as in aggregate. The marks secured by petitioner in annual examination of class XI is extracted as under :

Subject

Marks in Theory

Marks in Practical

Total

Max. Marks

Chemistry

31

22

53

100

English

44

44

100

Hindi

42

42

100

Maths

60

60

100

Physics

16

25

41

100

240

500

7. The marks secured by the petitioner in annual examination clearly show that he had secured 40% marks in each subject individually and also in aggregate. The question is whether he can be promoted to class XII only on the basis of marks secured in the annual examination. The amended Rule 119 (kha) of

Education Code dated 16.2.2000 is extracted below :

?119[k? & d{kk 10 rFkk 12 ds Nk=ksa gsrq l=kar esa m?kj izns"k ek;/fed f"k{k ifj"kn~ }kjk lkoZtfud ijh{kk vk;ksftr dh tk;sxh rFkk d{kk 9 dh tuinh; ijh{kk lfefr ds ek;/e ls okf"kZd ijh{kk ,oa laLFkkf/kdkjh ?izk/kkukpk;Z? ds fu.kZ; ds vuqlkj v/ kZokf"Zkd ijh{kk fu/kZkfjr le; ds vuqlkj laiUu dj;h tk;sxhA tuinh; ijh{kk lfefr } kjk vk;ksftr d{kk 9 ds okf"kZd ijh{kk ds vk/kkj ij gh Nk=kkaas dks d{ksUufr nh tk;sxhA vU; d{kkvksa d{kk 11 esa ,d d{kk ls nwljh d{kk esa izksUufr v)Zokf"kZd o okf"kZd ijh{kk esa lfEefyr ifj.kkeksa ds vk/kkj ij nh tk;sxhA ml ijh{kk esa Nk=ksa ls izR;sd fo"k; ,oa lez ;ksx esa m?kh.kkZd ds :i esa de ls de 33 izfr"kr ? ftuesa os ?ikad Hkh lfEefyr gksaxs] tks f"k{k laLFkk ds iz/kku }kjk fn;s tk;s? vad izkIr djuk visf{kr gksxkA viokn Lo:i dsoy okf"kZd ijh{kk ds vk/kkj ij d{kksUufr dk fu.kZ; dsoy ,sls gh ekeyksa esa fy;k tk ldsxk] tgk? Nk= us okf"kZd ijh{kk esa izR;sd fo"k; esa mlds izkIrkadksa dk ;ksx okf"kZd ijh{kk ds dqy fu/ kkZfjr vadksa ds 40 izfr"kr lsa de u gksA Hkys gh v?Zokf"kZd o okf"kZd ijh{kkvksa ls vius lfEefyr ifj.kkekas ds vk/kkj ij ?ikadksa dh O;oLFkk dk ykHk mBkrs gq, Hkh og d{kksUufr ds fy, vf/k?r u gksA

d{kk 6] 7 o 8 esa rhu fo"k;ksa rd rFkk d{kk 9 rFkk 11 esa nks fo"k;ksa rd vf/ kdre 10 ?ikad fn;s tk ldsaxA ijUrq d{kk 9 dh ijh{kk esa vf/kdre 8 ?ikad ek? f"k? ifj"kn dh fofu;ekoyh dh /kkjk fofu;e 20] v;/k; 12 ds vUrxZr fn;s tk ldsaxsA fo"k;okj izn?k fdll Hkh fo"k; esa fn;s tkus okys ?ikda mlh fo"k; esa] izkIr vad esa tksM+ fn;s tk;saxsA ijUrq bl izdkj izn?k ?ikadksa dks iw.kZ ;ksxad esa iqu? ugha tksM+k tk;sxA d{kk 6] 7 o 8 rFkk 11 esa ;fn dksbZ Nk= vLoLFkrk ds dkj.k fdll ,d ijh{kk esa lfEefyr ugha gks ldk rks l{ke fpfdRIk vf/kdkjh }kjk fuxZr vLoLFkrk izek.k&i= ,oa mudh laLrqfr ds vk/kkj ij laLFkk dsa iz/kku }kjk mlds ekeys esa ,d ijh{kk ds izIrkadksa dsa vk/kkj ij ijh{kkQy ?kksf"kr djus dk fu.kZ; fy;k tk;sxk ftlesa og lfEefyr gqv kksA ml n"kk esa d{kk 6] 7 o 8 esa rhu fo"k;kas rd rFkk d{kk 11 esa nks fo"k;ksa rd vf/kdre ?ikad fn;s tk ldsaxs] ijUrq d{kk 9 dh ijh{kk esa ;fn dksbZ Nk= vLoLFkrk ds dkj.k okf"kZd ijh{kk esa lfEefyr ugha gks ldk rks mls v?Zokf"Zkd ijh{kk ds vk/kkj ij d{kksUufr ugha nh tk;sxhA

8. This Rule provides that promotion from class XI to next class would be made on the basis of combined result of half-yearly and annual examinations and that candidate should obtain 33% marks in each subject and in aggregate, including grace marks. However, as an exception to this Rule, it is provided that promotion, only, on the basis of annual examination can be given to a student who secures minimum 40% marks in each subject individually and in aggregate. The exception was applicable to the petitioner as he had secured 240 marks out of 500 marks in the annual examination, which is 48%. He had also secured more than 40% marks in each subject as well. He was, thus, entitled to be promoted.

9. This was sufficient to dispose of this petition but it was vehemently argued that the petitioner having secured less than 25% in Physics theory, the Principal was justified in refusing to promote him. Before considering this submission, it is necessary to point out that the Principal misread Rule 119 (kha) and the

Regulations framed by the Board. Rule 119 (kha) has been extracted above. It does not require a candidate to secure 33% in individual subjects and 40% in aggregate. The mandatory requirement of 33% applies, when marks of half-yearly and annual examinations are combined together, whereas 40% rule is applicable to annual examination only. Further, this rule does not talk of grace mark where a student has secured 40% in annual examination both in individual subjects and aggregate. Therefore, any mention of grace mark in the order was unnecessary. The Principal also committed an error in applying the regulation of 25% in Physics theory, when there is no such requirement under Rule 119 (kha). The marks extracted earlier do show that the petitioner had secured only 16 out of 70 marks in Physics theory, which is less than 25%. But that did not stand in way of petitioner from being promoted. The Rule 119 (kha) does not place such restriction. The reason for it is obvious. In home examination the student is prepared for final examination of class XII conducted by the Board. Sometimes the student may fall ill or due to unforeseen circumstances, he may be absent, or he may fair badly in half-yearly examination, therefore, any harsh rule may harm the student's career. The rule making authority, therefore, did not provide any minimum pass marks to be obtained separately in subjects having both theory and practical, as the condition of 40% in each subject and aggregate itself is quite high. A student may fair poorly in half-yearly but if he improves in annual examination so as to secure 40%, then such a student should not be denied promotion. The requirement of 33% in combined examination and 40% in annual examination appear to have been made for the benefit of the student without sacrificing merit, The promotion in one case is 33% in individual subject and in aggregate after combining the marks of half-yearly and annual and in the other 40% in individual and aggregate. The latter is an exception to compel a student who has faired poorly in half-yearly to labour hard for annual examination. And if a student wakes-up late but proves his merit by securing a high percentage, then it would be unfair to deny him promotion. That, in my opinion, is clear intention and purpose of Rule 119 (kha). Further, in absence of any requirement in Rule 119 (kha) that a student has to pass Individually both in theory and practical, in the home examination of class XI, the Principal committed an error in declaring the petitioner failed. The Principal has relied on regulations framed by the Board. The amended Regulation 20 dated 27.10.1997 is extracted below :

la"kk sf/kr fofu;e v/;k; & ckjg fofu;e 20

20- ifj"kn~ dh gkbZ Ldwy rFkk b.VjehfM,V ijh{kk ds fdlh ,d fo"k; esa vuqq?kh.kZ ijh{kkFkhZ dks fuEu O;oLFkkvksa ds vuqlkj vuqxyzgkad ns; gksxk %

?d? ifj"kn~ dh ,d ijh{kk esa izfo"V ijh{kkFkhZ ;fn dsoy ,d fo"k; ftlesa iz;ksxkRed ijh{kk ugha gksrh gS] esa vuq?kh.kZ jgs vkSj ml fo"k; esa mls 25 izfr"kr ;k vf/kd vad feys gksa rks mls vuq?kh.kZ gq, fo"k; esa ikB~;dze lfefr }kjk fu/kkZfjr m?kh.kkZd rd vad ikus ds fy, mlds lEiw.kZ ;ksx ds vk/kkj ij ijh{kk lfefr }kjk le;≤ ij fu/kkZfjr fu;eksa ds vuqlkj vko";d vad vuqxyzgkad ds :i esa nsdj m?kh.kZ ? kksf"kr fd;k tk;sxk vkSj Js.kh nh tk;sxhA

?[k? ifj"kn~ dh ,d ijh{kk esa izfo"V fdlh ijh{kkFkhZ dks dsoy ,d fo"k; ftlesa fyf[kr ds lkFk&lkFk iz;ksxkRed ijh{kk Hkh gksrh gS] bl fo"k;ksa esa ijh{kkFkhZ dks fyf[kr rFkk iz;ksxkRed ijh{kk esa vyx&vyx 25 izfr"kr vad ikuk vfuok;Z gksxk bl izdkj iz;ksxkRed nksuksa fo"k;ksa esa fyf[kr rFkk iz;ksxkRed nksuksa esa vyx vyx 25 izfr"kr vad izkIr djus ij og vuqxyzgkad ds fy, vgZ gksxkA izfrcU/k ;g gS fd ijh{kkvksa dks ,d [k.M fyf[kr vFkok iz;ksxkRed ,d esa gh vuqxyzgkad ns; gksxkA fdlh Hkh fn"kk esa nksuksa [k.Mksa ?fyf[kr rFkk iz;ksxkRed? esa vuq?kh.kZ gksus ij vuqxyzgkad ns; ugha gksxkA

10. A reading of the regulation clearly indicate that it applies to examinations conducted by the Board. These rules are not applicable to home examinations of class XI conducted by various institutions in the State. The home examinations are to be conducted under amended Rule 119 (ka) and (kha) of the Education Code. Rule 119 (ka) lays down that examination of class XI has to be conducted by the Principal of the institution and questions in the examination could be asked as per the syllabus prescribed by the Board. In Rule 119 (kha) the procedure for promotion from class XI to XII and for awarding grace marks are prescribed. Nowhere in Rules 119 (ka) and (kha). It has been mentioned that regulations of Board shall be applied to home examination of class XI. Rule 119 (kha) being a specific provision the Principal could not have invoked the regulations framed by the Board. It was urged that since the petitioner did not secure 25% marks in Physics theory, therefore, grace marks could not be awarded to him. Regulations of the Board do not apply to class XI home examination. In Rule 119 (kha). It has clearly been mentioned that 8 grace marks can only be awarded as per Regulation 20 of the Board to examination of 9th class. But this is not applicable to class XI. The argument of grace mark is not at all relevant as petitioner was entitled to be promoted on 40% in annual examination. But if it would have been relevant, then in the absence of any provision like Regulation 20 for 9th class, there appears no reason to read that a student of class XI could be granted grace marks as provided in Regulation 20 only. In my opinion, there is no restriction to award grace marks if necessity arises in Physics theory. Since, petitioner has succeeded even without grace marks under Rule 119 (kha), the order of the Principal rejecting the representation was passed by completely misreading the Rule 119 (kha) of the Education Code and regulations of the Board. The result declared by the Principal of the petitioner of class XI and his order dated 3.8.2000 deserves to be quashed. The petitioner is entitled to be promoted to class XII. He is further entitled to fill his form for appearing in Intermediate Examination to be held in 2001. Any shortage in his attendance shall stand condoned.

11. In the result, this petition succeeds and is allowed. The order dated 3.8.2000 passed by the respondent No. 3, Annexure-6 to the writ petition and the result declaring petitioner to have failed in class XI examination is quashed. The respondent No. 3 is directed to promote the petitioner to class XII and admit him in class XII as a regular student. Any shortage in his attendance shall stand condoned. The respondent No. 3 is directed to permit the petitioner to fill his

form for appearing in Intermediate Examination, 2001. The form shall be filled by the petitioner before respondent No. 3, who shall accept the same and forward it to respondent No. 1 who shall accept it ignoring the delay, if any, caused due to pendency of the writ petition or time taken in office of respondent No. 3. The aforesaid directions shall be complied by respondent No. 3 within one week from the date a certified copy of this order is produced before respondent No. 3.

Parties shall bear their own costs.