
(1998) 07 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6967 of 1998

Ranjit Kashyap and Others

APPELLANT

Vs

Central Board of Secondary Education and Others

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Citation : (1998) 120 PLR 534

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : Rajiv Kataria, for the Appellant; Harsh Aggarwal, R.N. Raina and Subhash Ahuja, for the Respondent

Final Decision : Allowed

Judgement

H.S. Bedi, J.—The petitioners, three in number, applied for taking the 10 + 2 final examination in April, 1997. They appeared in the theory and practical groups of the paper "Introductory Computer Science" and passed the practical paper but failed in the theory paper. As per bye-law 42 of the Examination Bye-laws they were permitted two re-appear chances one to be taken in July/August, 1997 and second in March, 1998. They accordingly appeared in the re-appear examination in August, 1997 in the theory paper and once again failed. They also took their second chance in March, 1998 and it is the conceded position that petitioners No. 1 and 2 have since passed, whereas petitioner No. 3 has once again failed. The present petition, therefore, survives only with regard to petitioner No. 3. The grievance of the petitioner is that the re-appear examination of August, 1997 in the paper of "Introductory Computer Science" pertained to a course of study in the "Pascal" computer language whereas in the paper taken in March, 1998 the said language had been changed with the result that the petitioner had not undergone a course study in that computer language and as such second chance for re-appear given to her was merely illusory.

2. On notice of motion, two replies had been filed, one by respondent No. 1, the Central Board of Secondary Education and other by respondent No. 3 the

Principal, S.D. Public School, Sector 32, Chandigarh. In the reply filed by respondent No. 1 it has been pointed out that as per bye law 42 of the examination bye-laws a compartment candidate was given two chances to re-appear, one in August and the second in the month of March of the following year and that the examination paper for the compartment candidates in March examination would be the same as applicable to the regular candidates appearing in all the subjects at the said examination and as the petitioner was well aware of this stipulation as the same had also been reproduced in paragraph 3 of annexure R/I the application form that she had filled in for the purpose of taking the examination in March, 1998 she could not now turn around and make a challenge to the examination in question.

3. Mr. Rajiv Kateria, the learned counsel for the petitioner has raised two arguments before me, firstly that clause 3(iii) of bye law 42 of the examination bye laws was ultra vires being arbitrary and secondly as the course of study in the paper in question had been changed in 1998, the petitioner's success in the examination was well nigh impossible as she had not studied the new syllabi and course. As against this Mr. Harsh Aggarwal, learned counsel for the respondent No. 3 has placed reliance on the aforesaid bye law and the instructions given in annexure R/I.

4. After hearing learned counsel for the parties I am of the opinion that this petition deserves to succeed. Bye law 42 of the examination bye laws is reproduced below:-

"42. Compartment Examination for secondary / Senior School Certificate Examination.

(i) A candidate placed in compartment may reappear at the compartmental examination to be held in July/August and may avail himself/ herself of the second chance in March/April next year. The candidate will be declared passed provided he/she qualified the compartmental subject in which he/she had failed.

(ii) A candidate who does not appear or fails at one or both the chances of compartment shall be treated to have failed in the examination and shall be required to reappear in all the subjects including practical at a subsequent Annual examination of the Board as per syllabi and courses laid down for the examinations concerned in order to pass the examination.

(iii) Syllabi and courses for the compartmental candidates in March examination shall be the same as applicable to the candidates of full subjects appearing at the examination.

(iv) A candidate placed in compartment shall be allowed to appear only one subject at the second chance compartmental examination to be held in March/April next year.

(v) For subjects involving practical work, in case the candidate has passed in practical at the main examination he/she shall appear only in theory part and

previous practical marks will be carried forward and accounted for. In case a candidate has failed in practical he/she shall have to appear in theory and practical both irrespective of the fact that he/she has already cleared the theory examination."

5. A bare reading of the clause 42(iii) would clearly indicate that no successful challenge can be made with regard to its vires, and as a matter of fact the principle laid down therein is a laudable one. It is, however, to be noted that if a statutory bye laws itself provides two chances for clearing the compartment, both the chances should be effective and not illusory. It is the admitted case on both sides that the theory paper in the "Introductory computer science" in March, 1998 was not in the "Pascal" language as a new course and instruction in a new computer language had been carved out by respondent No. 1 for that year. Mr. Aggarwal has, however, pointed out that petitioners No. 1 and 2 had nevertheless passed the same examination and the remaining petitioner could not thus make a grievance. Mr. Kateria has, however, brought to my notice that these petitioners had passed the examination with very poor marks and even these marks had been probably obtained through providence. Moreover in the face of massive competition amongst students for admission to the higher educational institution a bare pass mark is no satisfaction to a student. I am, therefore, of the view (in the light of the peculiar facts of the case) that it would have been appropriate for respondent No. 1 to have created a bridge between the old and the new course/syllabi so that a compartment candidate could take an effective second chance, as provided by Bye-Law 42. Mr. Aggarwal's reliance on annexure R/I is also misplaced as this form pertained to the examination in March, 1988 itself as such the petitioner could not be attributed any special knowledge about the changes in the syllabi prior to that date. This petition is accordingly allowed and a direction issued to respondent No. 1 to give petitioner No. 3 one more chance in the paper in question as per the syllabi which she had studied in the year 1995-97.

6. It has been urged by Mr. Kateria that the examination should now be fixed expeditiously. Respondent No. 1 is accordingly directed to hold the examination for the petitioner before the end of October, 1998 after giving her a notice of atleast one month prior to the date of the examination. No costs.