

(2010) 08 AHC CK 0288
In the Allahabad High Court
Case No : Special Appeal No. 1286 of 2009

Regional Officer, Central Board of Secondary Education,
Regional Office, Allahabad & Another

APPELLANT

Vs

Tarkeshwar Singh & Another

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0288

Hon'ble Judges : F.I.Rebello, CJ and A.P.Sahi, J

Final Decision : Allowed

Judgement

A.P. Sahi, J.

1. This special appeal by the Central Board of Secondary Education questions the legality of the judgment and order of the learned Single Judge, whereby the writ petition preferred by the respondent no.1writ petitioner, a student of ClassXII, has been allowed and a direction has been issued to declare the result of respondent no.1writ petitioner.
2. The facts as indicated in the judgment and order of the learned Single Judge are not disputed and, therefore, the same are not being reproduced.
3. The contention raised by the appellantsBoard is that the conclusion drawn by the learned Single Judge on the basis whereof the respondent no.1writ petitioner has been treated to be a private candidate entitled to appear in the examinations, is erroneous in view of the provisions of the regulations relating to the admission to examinations.
4. Sri H.N. Pandey, learned counsel for the appellants, contends that the entitlement of a student to appear in the examination is regulated on the basis of minimum 75% attendance in the classes and for that, Sri Pandey has invited our attention to Rule 13, which is quoted below:

13. A Regular Course of Study.

13.1 (i) The expression "a regular course of study" referred to in these ByeLaws means at least 75% of attendance in the Classes held; counted from the day of commencing teaching of Classes X/XII upto the 1st of the month preceding the month in which the examination of the Board commences. Candidates taking up a subject (s) involving practicals shall also be required to have put in at least 75% of the total attendance for practical work in the subject in laboratory. Heads of Institutions shall not allow a candidate who has offered subject (s) involving practicals to take the practical examination (s) unless the candidate fulfils the attendance requirements as given in this Rule.

(ii) The candidates who had failed in the same examination in the preceding year and who rejoins Classes X/XII shall be required to put in 75% of attendance calculated on the possible attendance from the 1st of the month following the publication of the results of that examination by the Board upto the 1st of the month preceding the month in which the examination of the Board commences.

(iii) In the case of migration from other institutions, attendance at the institution/school recognized by the Education Department of the State/Union Territory from which the candidate migrates will be taken into account in calculating the required percentage of attendance.

13.2 Requirement of Attendance in Subjects of Internal Assessment

(i) No student from a School affiliated to the Board shall be eligible to take the examination unless he has completed 75% of attendances counted from the opening of class X/XII upto the first of the month preceding the month in which the examination commences in the subjects of internal assessment.

(ii) Exemption from W.E./Art Education/P&HE may be granted to a candidate on medical grounds provided the application is supported by a certificate given by a Registered Medical Officer of the rank not below that of Asstt. Surgeon and forwarded by the Head of the School with his recommendations.

(iii) The Chairman shall have powers to condone shortage of attendances in subjects of internal assessment."

5. The power to condone the shortage of attendance is contained in Rule 14, which is quoted below:

"14. Rules for Condonation of Shortage of Attendances.

(i) If a candidate's attendance falls short of the prescribed percentage, the Head of the School may submit his name to the Board provisionally. If the candidate is still short of the required percentage of attendance within three weeks of the commencement of the examination, the Head of the Institution shall report the case to the Regional Officer concerned immediately. If in the opinion of the Head of the Institution, the candidate deserves special consideration, he may submit his recommendation to the Regional Officer concerned not later than three weeks before the commencement of the examination for condonation of shortage in

attendances by the Chairman, CBSE, who may issue orders as he may deem proper. The Head of the School in his letter requesting for condonation of shortage in attendance, should give the maximum possible attendance by a student counted from the day of commencing teaching of Classes X/XII (beginning of the session) upto the 1st of the month preceding the month in which the examination of the Board commences, attendance by the candidate in question during the aforesaid period and the percentage of attendance by such a candidate during the aforesaid period.

(ii) Shortage up to 15% only may be condoned by the Chairman. Cases of candidates with attendance below 60% in class X or class XII, as the case may be, shall be considered for condonation of shortage of attendance by the Chairman only in exceptional circumstances created on medical grounds, such as candidate suffering from serious diseases like cancer, AIDS, TB or similar serious diseases requiring long period of hospitalization.

(iii) The Principal shall refer a case of shortage within the above prescribed limit of condonation to the Board, either with the recommendations or with valid reasons for not recommending the case.

(iv) The following may be considered valid reasons for recommending the cases of the candidates with attendance less than the prescribed percentage:

(a) prolonged illness;

(b) loss of father/mother or some other such incident leading to his absence from the school and meriting special consideration; and

(c) any other reason of similar serious nature.

(d) Authorised participation in sponsored tournaments and sports meets of not less than interschool level and at NCC/NSS camps including the days of journeys for such participation shall be counted as full attendance."

6. In the event, a student is unable to succeed in the examinations, he will be permitted to appear in the next examinations as "private candidate" under Rules 16, 17 and 18 of the Rules. Rule 18 is relevant for the purposes of the present controversy, which is quoted below:

"18. Persons eligible to appear as "Private Candidate" at All India Senior School Certificate (XII) Examination

(i) A candidate who had failed at the All India Senior School Certificate Examination of the Board will be eligible to reappear at a subsequent examination as a private candidate in the syllabus and text books as prescribed for the examination of the year in which he will reappear.

(ii) Teachers serving in educational institutions affiliated to the Board who have already passed Secondary or an equivalent examination at least two years before taking the Senior Schools Certificate Examination. Teacher candidates shall

submit his application form along with a certificate by the Head of school in which they are serving duly countersigned by the Director of Education of the State/Union Territory concerned to the Regional Officer of the Board of the region in which the teacher is serving."

7. Sri Pandey, on the strength of the aforesaid Rules, contends that respondent no.1 writ petitioner was neither medically unfit nor there was any evidence to that effect and, therefore, he was not entitled to appear as private candidate. It is further submitted that respondent no.1 writ petitioner had shortage of attendance in the year 2008 and, therefore, on account of this shortage, he was not permitted to appear in the examinations of the year 2009 as his examination form was not accepted. The writ petition, giving rise to this decision, was filed at that stage, and an interim order was passed on 2.3.2009, whereby the Appellants Board was directed to issue Admit Card to the respondent no.1 writ petitioner and permit him to appear in the examinations. The writ petition was ultimately allowed on 29.6.2009.

8. This special appeal was preferred and an interim order was passed on 19th August, 2009 staying the operation of the impugned judgment and order. During the pendency of the appeal, we had called upon the learned counsel for the appellants Board, to make an enquiry about the performance of respondent no.1 writ petitioner in the examinations, in which he was permitted to appear under the interim order of this Court. The appellants were directed to produce the marks obtained by respondent no.1 writ petitioner in a sealed envelope, vide order 15.7.2010. In compliance, the learned counsel for the Board has produced the marks obtained by respondent no.1 writ petitioner in the respective subjects, in which he had appeared. The marks obtained are as under:

"SUBJECT WISE MARKS OF THE CANDIDATE MASTER TARKESHWAR SINGH S/O SH R.D. SINGH, ROLL NO.5785819 OF AISSCE 2009.

SUBJECT

THEORY

PRACTICAL

TOTAL

GRADE

ENGLISH CORE (301)

052

052

D1

HINDI CORE (302)

085

085

A1

ECONOMICS (030)

065

065

B1

BUSINESS STUDIES (054)

054

054

C2

ACCOUNTANCY (055)

035

019

054

C2

Sd/ Sd/

(Ranbir Singh) Assistant Secretary

Desk Officer Central Board of Secondary Educational

Central Board of Secondary Education 35B, M.G. Marg, Civil Lines, Allahabad.

Regional Office

35B, Civil Lines, Allahabad (U.P.)"

9. Sri Pandey, learned counsel for the appellantsBoard, contends that the finding recorded by the learned Single Judge to the effect that respondent no.1writ petitioner would come under the definition of private candidate is not in conformity with the Rules.

10. The Rules as quoted hereinabove, do indicate that the condonation in respect of shortage of attendance is due to medical reasons. A further amendment has been brought out to the notification dated 16.10.2007. Paragraph 5 of said notification is quoted below:

"5. ADDITION IN RULE 18 (iii) OF CHAPTER 4, UNDER PERSONS ELIGIBLE TO APPEAR AS "PRIVATE CANDIDATE" AT ALL INDIA SENIOR SCHOOL CERTIFICATE

(CLASS XII) EXAMINATION HAS BEEN ADDED AS UNDER:

Rule 18 (iii) Regular candidate (s) of the previous year who have completed regular course of studies and have been allotted Roll No. for appearing at the examination but could not appear at the Annual Examination due to medical reasons except shortage of attendance as laid down in the Examination Bye laws will also be eligible to reappear at a subsequent examination as a private candidate in the syllabus and text books as prescribed for the examination of the year in which he will reappear."

11. In our opinion, the opinion expressed by the learned Single Judge does not require any further deliberation, even though we have our reservations about the reasons given therein, inasmuch as respondent no.1 writ petitioner has obtained a fairly comfortable grade in the examinations and has proved his worth on the academic side.

12. Apart from this, respondent no.1 writ petitioner suffers from permanent physical disability as indicated in the Disability Certificate issued by the competent Medical Officer, which has been filed as Annexure No.3 to the stay application of this appeal. The same records 80% physical disability of the legs. The aforesaid physical disability is an incapacity, which is medically accepted. Respondent no.1 writ petitioner was, therefore, in the state of medical unfitness, which can be a reason to consider the case of the respondent sympathetically keeping in view his academic performance as indicate hereinabove.

13. We are, therefore, not inclined to exercise our discretion, so as to jeopardise the career of respondent no.1 writ petitioner. The question of law raised by the learned counsel for the appellants Board may, however, require consideration in an appropriate case and we should not be construed as having given our approval to the reasons recorded by the learned Single Judge.

14. In view of the facts as stated above, the result of respondent no.1 writ petitioner shall be declared forthwith. We are passing this order in view of the peculiar facts and circumstances of this case keeping in view the physical condition of respondent no.1 writ petitioner and it shall not be treated as a precedent for any other case.

15. This special appeal stands disposed of, accordingly. No order as to costs.