

(2005) 05 DEL CK 0185

In the Delhi High Court

Case No : Writ Petition (Civil) No. 6587 of 2005

Richa Malhan through Rajbir Singh

APPELLANT

Vs

Army Public School and Others

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Instructions Regarding Assessment, Evaluation and Promotion of the Students Rules — Rule 35

Citation : (2005) 05 DEL CK 0185

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Geeta Luthra, for the Appellant; R. Ojha, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—This writ petition has been filed by the petitioner praying for the following reliefs:

a) Directing the respondent school to allow the petitioner to appear for re-test Class-XI by awarding her 5 grace marks in Physics subject;

(b) Pass such order or further orders that this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

2. There is no dispute to the factual matrix. The petitioner has secured 67.2% marks in the class 10th Board examinations. She was admitted to the science stream in class 11th. Unfortunately, before the time the petitioner was to take the examinations, she started having high fever. She was advised blood test in order to get the correct diagnose of the cause of her illness. On the 23rd February, 2005, the petitioner received the haematology/serology of her blood test whereby it was reported as under:

Widal is Strongly +ve("Positive")

The petitioner was thus diagnosed as suffering from enteric fever commonly

known as typhoid.

3. Despite treatment and regular check ups, the petitioner had not recovered when her class 11th final examination commenced. The petitioner took all the examinations on the scheduled date despite her sickness. The final examination started on 4th March, 2005 and ended on 17th March, 2005. Unfortunately when the result was declared on 30th March, 2005, the petitioner has been detained in class 11th for not getting the passing marks in two subjects i.e. physics and chemistry.

4. The petitioner contends that according to the promotion policy of the respondent school, they conduct re-test for students who have failed in different subjects. However, a student has to have obtained at least 25% marks in each subject to be promoted. If a student scores less than 25% in any subject, even if the summative total is 33% or more, the student is treated as failed/re-test as the case may be.

The petitioner is aggrieved by the refusal of the school to permit a re-test to her in physics and chemistry.

5. As per the policy of the respondents, re-test is permissible to the student only if he/she fails in a maximum two subjects where the student has secured more than 20% marks in the failing subject.

6. According to the petitioner, the respondents grant grace marks to a child as per their policy and the petitioner as such ought to be granted grace marks up to 10 marks in two papers i.e. 5 grace marks in each subject. The petitioner submits that the present case is a fit case for exercise of such discretion in her favour.

7. The petitioner is stated to have got 31 marks in chemistry and 27.4 marks in physics which are the two subjects in which she has failed. Learned Counsel for the petitioner submits that if she is given 5 marks in physics, then she would be entitled to take the re-test. The claim of the petitioner is based principally on the plea that the petitioner could not pass these two subjects only on account of her sickness and that the rule and policy of the respondents should not be interpreted to her prejudice in these circumstances.

8. Learned Counsel for the respondents on the other hand has vehemently opposed grant of the writ petition and submits that the provision of re-test/compartment in the school as per its policy in class 9th and 11th is permissible only in a minimum in two subjects in which the child has secured more than 20% marks. If the child secures less than 20% marks in one subject, he/she is declared as failed.

It is further submitted that if a child secures less than 25% marks in the annual examination in any subject, even if the summative total is 33% or more, the child would stand failed/re-test as the case may be. The provision for awarding grace marks for promotion for class 9th and 11th is a maximum or total of 10

grace marks in any two subjects with the condition of maximum of 5 marks in one subject. The prayer of the petitioner is opposed on the ground that the petitioner never disclosed to the school prior to 1st April, 2005 that she was having fever between 26th February, 2005 to 15th March, 2005. The respondents rejected the request vide their letter dated 11th April, 2005. It is submitted that the grace marks are awarded only for the purposes of promotion and not for the purposes of participating in a re-test. It is further submitted that special consideration is to be given to children who are medically unwell and submit medical certificates in advance and that no medical certificate is entertained from failed students.

In support of his submission that the rules have to be strictly complied, reliance has been placed on the pronouncement of this Court in *Manish Sood Vs. Lt. Governor and Others*, and *S.K. Puri and Others Vs. Lt. Governor, NCT of Delhi and Others*,

9. I have given my considered thought to the issues raised and have carefully perused the available record. It is not disputed that if the petitioner had submitted a medical certificate and had not participated in the entire examination on the ground of sickness, the respondents would have permitted her to participate in the re-test examination for all the subjects and would have promoted the petitioner to the next class. There is no challenge to the authenticity or the genuineness of the medical reports and certificates of the petitioner. The only fault attributed to the petitioner is that despite her sickness, she took the examination.

10. I find that the petitioner is stated to have worked hard despite her ill-health and had taken the examination because she did not want her sickness to come in the way of her taking the same. The submissions made on behalf of the respondents may be tested thus.

Despite her sickness, the petitioner secured 74 marks in English, 43 in Biology, 31 in Chemistry and 27.5 in Physics. The petitioner is being denied the benefit of re-test in Physics only because she is 2.5 marks short of the necessary the 30%. The petitioner has a necessary 30% in Chemistry which should have entitled her to the re-test.

11. The judgments cited by the respondents are clearly distinguishable in the facts of the present case. In *S.K. Puri's* case, the child had secured less than 40% marks in three subjects. It was not a case where there was any mitigating circumstances and yet an absolute claim for entitlement to promotion was set up. It was in these circumstances that the claim of the petitioner was denied.

12. In 58 (1999) DLT 328 entitled *Master Manish Sood v. Lt. Governor and Ors.*, the court held that there must be clear injustice or blatant abuse of power which would entitle a child to exercise of discretion in its power. Perusal of the facts of the case shows that in this case the student had scored badly in all subjects. There were no mitigating circumstances as sickness.

I find reference has been made to a Rule 35 of the "Instructions" Regarding Assessment, Evaluation and Promotion of the Students Rules" published by the Directorate of Education, Delhi whereby it was necessary to secure only 25% marks in the failed subject to take a re-test or compartment.

13. In the instant case, if the petitioner had not taken any examination whatsoever on the ground of her sickness, she would have been entitled to take the compartment examination/re-test. The award of grace marks is made to failed students for promotion purposes without taking a re-test. The petitioner is seeking to take the examination again and not promotion with award of grace marks without taking a re-test. In my view a student who has failed in the aggregate is worse off than a student who may have passed in the aggregate but could not clear one or two subjects on account of medical reasons.

14. The sickness of the petitioner has not been disputed. Having regard to the facts and circumstances of the case and the attempt made by the petitioner despite her sickness, in my view the petitioner ought to be granted the relief prayed for. It is made clear that this order is being made only in the facts and circumstances of the present case and would not be cited as a precedent in any other case.

15. Vide orders dated 21st April, 2005, the petitioner was able to take the re-test in Physics and Chemistry for the class 11th. The writ petition is allowed. The respondents are directed to declare the result of the petitioner. In case she has passed the re-test, she shall be entitled to be promoted to the next class as per the policy of the respondents.

There shall be no order as to costs.