
(2016) 02 MP CK 0070
In the Madhya Pradesh High Court
Case No : Writ Petition No.8036 of 2015

Ronak Shivhare

APPELLANT

Vs

Central Board of Secondary Education and others

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2016) 2 JabLJ 31 : (2016) 2 MPLJ 639

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : Vivek Jain, Advocate, for the Appellant; D.P. Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rohit Arya, J.—Shri Vivek Jain, Advocate for petitioner.

1. Shri D.P. Singh, Advocate for respondent.

This writ petition under Article 226 and 227 of the Constitution of India is at the instance of a student of class 10th prosecuting her studies in respondent no.3-Kendriya Vidyalaya No.1, Shakti Nagar, Gwalior.

Petitioner is aggrieved by the communication dated 6/10/2015 issued from the office of respondent no.2, wherein she has been given to understand that her retest of summative assessment Part-II for class 10th conducted by respondent no.3-school in July, 2015 is not acceptable, as earlier the school had declared her absent in SA-II examination held in the month of March, 2015 and as a result, petitioner has been declared fail in SA-II examination without considering the marks secured by her in the examination held in the month of July, 2015.

2. Learned counsel for the petitioner contends that the petitioner is a cancer patient suffering from (Non-Hodgkin"s Lymphoma) and has been undergoing successive chemotherapy at Tata Memorial Hospital in the year 2014-15. She had

appeared in SA-I examination in 2014 and was declared successful. Thereafter, she appeared in the internal examination, however, could not appear in the SA-II examination held in the month of March, 2015, as she had to go back to Mumbai for routine chemotherapy as per the treatment schedule provided to her by the Cancer Specialist of the Tata Memorial Hospital. Due to such reason beyond her control the petitioner could not take SA-II examination.

3. Thereafter, on her application respondent no.3 considering the predicament of the petitioner permitted her to appear in EIOP examination scheduled in the month of July, 2015. She appeared in EIOP examination and her copies were also evaluated. Learned counsel contends that the aforesaid EIOP examination in fact is conducted for such students who have not done well in SA-II examination and, therefore, to provide them an opportunity of improvement such chance of examination is made available to them. It is further submitted that under such circumstances, there was no reason or justification for not having accepted the result of EIOP examination and declared the same by respondent no.2/Board.

4. Per contra, Shri D.P. Singh, learned counsel appears for respondents no.1, 2 and 3 and submits that SA-I, SA-II and EIOP are prescheduled examinations.

5. Since the petitioner had not appeared in SA-II examination, she was declared absent and, therefore, even if she has appeared in EIOP examination in July, 2015 that is of no consequence, as the Board cannot permit such student to take EIOP examination after having remained absent in SA-II examination. Hence, no illegality has been committed by the Board while rejecting the prayer for declaration of result taking into consideration her marks obtained in the EIOP examination.

6. Heard counsel for the parties.

7. There is no cavil of doubt between the parties that the respondent/Board has framed an examination bye laws, where under clause 41 deals with the scheme of examination and inter alia clause 41.2 prescribes for Eligibility for Improvement of Performance in Secondary Examination, which reads as under:-

"41.2 Eligibility for Improvement of Performance in Secondary Examination - A candidate obtaining Grades E1 or E2 in any or all the five subjects (excluding the 6th additional subject) under Scholastic Area A, as per the scheme of studies, jointly examined by the School and Board shall be eligible for improvement of performance in any or all the five subjects."

8. A bare reading thereof suggests that such students who have obtained grades E1 or E2 in any or all the five subjects shall be afforded an opportunity for improvement of performance in any or all the five subjects and such opportunity is afforded by allowing them to take examination conducted after SA-II examination. Such process has been evolved to ensure that every students who otherwise have not done well in the examination get an opportunity of improvement, i.e. in the welfare of the students.

9. True it is that the circular, Annexure P/3, dated 8/8/2013 has been issued proscribing the month and year of examination: for SA-1 31st October, SA-II March, 2015 and EIOP July, 2015, however, the question that arises for consideration is as to "whether the petitioner,

10. In the opinion of this Court the procedure and schedule are prescribed for regulating the examination by the Board and such regulations are to be understood in the context of the welfare of the students for the reason provisions have been made to provide opportunity to the students for improvement in their performance by providing an opportunity after completion of SA-II examination of class 10th. In the context of the factual matrix in hand the petitioner at her young age had suffered from cancer. She had no option but to undergo.