
(2003) 11 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 836 of 2003

Rupa Jaret

APPELLANT

Vs

H.P. Board of School Education

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Senior Secondary Certificate (10+1) Examination Regulations, 2002 — Regulation 5

Citation : (2003) 3 ShimLC 287

Hon'ble Judges : V.K. Gupta, C.J;Kuldip Chand Sood, J

Bench : Division Bench

Advocate : Rajiv Sharma and H.S. Giani, for the Appellant; Lovneesh Kanwar, for the Respondent

Final Decision : Allowed

Judgement

Kuldip Chand Sood, J.—These two petitions which raise common question of law and fact are taken up for hearing with the consent of the parties without being formally admitted.

2. The question raised in these petition is whether a student having been admitted to an examination after completing course of studies and other formalities for that examination, should suffer for the remissness and negligence on the part of the Board, which approved her candidature to appear in the Examination, and permitted her to take the examination.

3. Rupa Jaret, (Petitioner in civil writ petition No. 836 of 2003), Ankita Gosain (Petitioner in Civil Writ Petition No. 837 of 2003) passed their matriculation examination in the year 2002 from St. Xavier's High School, Shimla in the Stream "Council for the Indian School Certificate Examinations" (ICSE for short).

4. It is admitted position that pass certificate is awarded to those candidates who pass the examination at least in five subjects one of which must be English. The stipulation in the pass certificate read :

Awards and conditions for awards :

PASS CERTIFICATES will be awarded to candidates who attain the pass standard in at least five subjects, which must include the subject English :

Provided that no candidate, except as otherwise exempted by the Council, shall be awarded a Pass Certificate unless in addition to fulfilling the conditions above he has attained a pass grade in SUPW and Community Service as examined/assessed internally by the School.

5. The Petitioner having passed their matriculation examination, were admitted in ten plus one class by the same School. This School, for the purpose of ten plus one class, is affiliated to Respondent-H.P. Board of School Education. At the end of the academic year, Petitioners appeared for the ten plus one examination conducted by the Respondent Board in March, 2003 under Roll Nos. issued by the Board. The result of the Petitioners was withheld by the Board on the ground that their admission to the School and consequent appearance in the ten plus one examination was irregular as under Regulation 5 of Senior Secondary Certificate (10+1) Examination Regulations, 2002 of the Board (Annexure-PA), Petitioners were ineligible for admission to Class XI of Senior Secondary Certificate (i.e. Ten Plus One Examination) because they did not pass their matriculation examination with Mathematics.

Relevant part of Regulation 5 reads :

5. Admission to Class XI of Senior Secondary Certificate Ten Plus One examination to an affiliated institution shall be open to a person who has passed:

(i) The Matriculation or Higher Secondary Part-I Examination of the Board of School Education, Himachal Pradesh.

(ii) Any other examination recognized by the Board as equivalent to (i) above. Provided that the candidate has qualified the examination with English, Mathematics and Hindi subjects.

Provided further that students offering:

(a) Science Group must have secured at least 50% marks in the aggregate;

(b) Commerce Group must have got at least 45% marks in aggregate;

(c) Humanities Group must have obtained at least 33% marks in aggregate.

(d) Relaxation of 5% marks for SC/ST candidates shall be given for admission in Science and Commerce group only.

(Emphasis given)

6. A reading of the above regulation shows that a student who has passed his matriculation examination from a School other than the School affiliated to the Board can be admitted in Class Ten plus One of a School affiliated to the Board

provided such student had qualified matriculation examination with English, Mathematics and Hindi subjects. The Petitioners though passed the matriculation examination, in ICSE Stream, with English and Hindi but did not qualify in the subject of Mathematics. In the given circumstances, the Petitioners were indeed not eligible to be admitted in Ten Plus One Class of St. Xavier's High School, which is affiliated, to the Board.

7. The grievance of the Petitioners is that they having been admitted to the School, affiliated to the Board, in Class Ten plus One, and the Board having allowed them to appear in the annual examination, now cannot turn around and withhold or cancel their result on the ground that they were ineligible to admission to the School.

8. The contention of the learned Counsel for the Board is that the Petitioners were permitted by the Board to appear in the examination under roll numbers issued by the Board on the assumption that School authorities had scrutinized the admission forms with due application of mind. The Petitioners were ineligible for admission to the School in Ten plus one and consequently not entitled to appear in the examination. A further contention raised is that the School authorities, who are supposed to be well conversant with the regulations, ought not to have admitted the Petitioners in Ten plus one class and in any event, ought not to have forwarded their forms to appear in the examination. The result of the Petitioners, who were ineligible to appear in Ten plus one examination, is liable to be cancelled.

9. Mr. Kanwar, learned Counsel for the Respondent Board informs us that the Petitioners have passed in Ten plus one examination conducted by the Board.

10. It is conceded position that the Petitioners never made any misrepresentation in seeking admission to class Ten plus one of the School affiliated to the Board nor they misled or mis-stated any fact or withheld any fact when they submitted their forms to appear in the Ten plus one examination conducted by the Board. They were given admission by the School on the basis of their ICSE certificates, which clearly indicated that they had not passed their matriculation examination in the subject of Mathematics. The Petitioners, in our view, in the circumstances cannot be allowed to suffer for the remissness, negligence or callousness of the Board or the Authorities of the School. Cancellation of the result of the Petitioners at this stage would mean waste of two valuable academic years of the Petitioners for no fault of theirs. The action of the Respondent Board is not only unfair and unjust but also irrational and illegal.

11. As far back as in 1975, the Supreme Court in Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, observed :

Once the Appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused admission subsequently for any infirmity which should have been looked into before giving

the applicant permission to appear.

12. The Apex Court once again in *Ashok Chand Singhvi Vs. University of Jodhpur and Others*, held that when a candidate conceals nothing from the University and the Authorities grant admission to him after considering all relevant facts, then such a candidate cannot be made to suffer by putting in abeyance or canceling his admission for the mistake committed by the Authorities themselves in granting admission. The decision was again reiterated in *Sanatan Gauda Vs. Berhampur University and others*, In that case, the qualifying marks for admission as per Regulation of the University for post graduate students were 40% or more than 39.5% and the Appellant secured less than 39.5% marks. He was not eligible for admission to the Law College. Their Lordships in this background observed :

...The Appellant while securing his admission in the Law College had admittedly submitted his marks-sheet along with the application for admission. The Law College had admitted him. He had pursued his studies for two years. The University had also granted him the admission card for the Pre-Law and Intermediate Law examinations. He was permitted to appear in the said examinations. He was also admitted to the final year of the course. It is only at the stage of the declaration of his results of the Pre-Law and Inter-Law examinations that the University raised the objection to his so-called ineligibility to be admitted to the Law Course. The University is therefore, clearly estopped from refusing to declare the results of the Appellant's examination or from preventing him from pursuing his final year course.

13. This apart, the Board acquiesced the infirmities if any in the admission of the Petitioners to examination when they issued roll numbers to them and permitted them to take the examination.

14. In view of the settled position of law, the action of the Respondent Board in withholding and/or cancelling the result of the Petitioners, in the circumstances, is unsustainable.

15. In result, we allow the writ petitions. The communication of the Board to the Petitioners that their result would be cancelled (Annexure-PE) in case of Petition in Civil Writ Petition No. 837 of 2003, *Ankita Gusian v. H.P. Board of School Education* and Annexure R-III in Civil Writ Petition No. 836 of 2003, *Rupa Jaret v. H.P. Board of School Education*, are quashed. The Respondent Board is directed to declare the result of both the Petitioners of Ten Plus One Examination under Roll No. 467303 in cases of Petitioner Rupa Jaret and 467305 in case of Petitioner Ankita Gusain held in March, 2003 within one week from today. Both the Petitioners shall be entitled to all consequent benefits of declaration of such result.

No. costs.

CMP Nos. 2025 of 2003 & 2027 of 2003.

Both these Misc. petitions shall stand disposed of.