

(1998) 01 DEL CK 0035
In the Delhi High Court
Case No : C.W.P.No. 908 of 1997

Sameer Mathur

APPELLANT

Vs

Happy School and Another

RESPONDENT

Date of Decision : 01-01-1998

Acts Referred:

Citation : (1998) 01 DEL CK 0035

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : Mr. Alakh Kumar, for the Appellant; Mr. Sudhir Kumar and Mr. Anil Kumar, for the Respondent

Judgement

Cyriac Joseph, J.—The petitioner is a student of Class 10th in the first respondent school which is a affiliated to the second respondent Central Board of Secondary Education. He has filed this writ petition against the action of the respondents in not permitting him to appear in Class 10th examination of the CBSE. On the basis of the interim order passed by this Court on 28th February,1997, the petitioner has been allowed to appear in the examination provisionally and subject to the ultimate decision in the writ petition. The result of the examination in the case of the petitioner has been with- held.

2. According to the averments in the writ petition, the petitioner has been studying in first respondent school since his admission to the Nursery class. It is alleged that respondent No.1 never informed the petitioner that his attendance had fallen short and that he would be debarred from appearing in the examination. The petitioner has been allowed to appear in the practical examination conducted by the school. It is further stated that the reason for the shortage of attendance was that his father was hospitalized because of heart-attack in the later part of the month of December,1996 and continued to be under medical supervision. It is further alleged that despite all efforts to persuade respondent No.1 to give the roll number to the petitioner, they have refused to do so. According to the petitioner, the school authorities are trying to

safeguard their reputation by denying opportunity to the petitioner to appear in the examination. Based on these averments, the petitioner has prayed for a direction to the respondent to allow the petitioner to appear in the class x examination conducted by the CBSE scheduled from 3rd March,1997 and also to issue the roll number to enable him to appear in the said examination.

3. In the counter affidavit filed by respondent No. 1, it has been pointed out that the petitioner had only 44.4% attendance during the academic year 1996-97. Respondent No. 1 has denied the allegation that the petitioner was never informed by the school about the shortage of attendance. It is stated that respondent No.1 had time and again told the petitioner and his parents that unless and until his attendance came up to the mark or the norms set by respondent No. 2, he might not be allowed to appear in the Board examinations. It is also stated that respondent had intimated the parents of the petitioner on 28th November,1996 about the shortage of attendance and had invited them to discuss the matter in the school on 29th November, 1996. It is further stated that the petitioner had written two letters through his mother Smt.Sunita Mathur which were in different hand writings. It appeared to respondent No. 1 that one of the letters had been written by the petitioner himself and the other had been written by the petitioner's mother. In the letter written by the petitioner's mother respondent No.1 was told that she had been suffering from slip disc and high blood pressure and further that she had been advised complete bed rest by the Doctor and that his father and sisters were out of station. The petitioner's mother also promised to meet respondent No.1 as early as possible. In another letter of even date which appeared to have been written by the petitioner himself, it was mentioned that the petitioner was suffering from jaundice and applied for leave from 27th November,1996 to 30th November, 1996.

4. It is further stated in the counter affidavit of respondent No. 1 that the petitioner had never attended any class in November and December, 1996 and his attendance for those two months was altogether Zero. However, in order to grant opportunity to the petitioner to appear in examination, he was allowed to appear in the practical examinations conducted by the school. It is also stated in the counter affidavit that the petitioner had never informed respondent No.1 that his father was in hospital because of heart attack in the later part of December, 1996 or that he continued to be under medical supervision. It is further stated that through a letter dated 3rd February, 1997, respondent No. 2 had asked about the case of shortage of attendance and that respondent No.1 through a letter dated 14th February, 1997 informed respondent No.2 that there were four cases of attendance below 80%. It is also stated that condensation of shortage of attendance was recommended in three cases and the shortage was condoned. It is stated that shortage of attendance was not recommended or condoned in the case of the petitioner whose attendance was only 44.4%. Though it is not so stated in the counter affidavit, learned counsel for respondent No. 1 after taking instructions explained that the percentage of attendance in the three cases where shortage was condoned was 74% ,69% and 67% respectively. Respondent No. 1

has also denied the allegation that the school tried to safeguard their reputation by denying opportunity to the petitioner to appear in the examination.

5. It is alleged in the counter affidavit of respondent No. 1 that all the letters which were sent by respondent No. 1 to the petitioner's parents were received by the petitioner himself forging signatures of his parents time and again .

6. Respondent No. 2 has also filed a counter affidavit pointing out that relevant provisions in the examination byelaws of the CBSE relating to admission to examinations, requirement of attendance and condensation of shortage of attendance. As per byelaw No. 12, a candidate is eligible to appear in Class x examination of the CBSE only if he has completed a regular course of study as defined and detailed in byelaw No. 13. As per byelaw No.13, the expression "a regular course of study "means at least 75% of attendance in the classes/ lectures held; counted from the date of commencing of teaching up to the first of the month preceding the month in which the examination of the Board commenced. As per byelaw No.14, shortage of attendance up to 15% may be condoned by the Chairman CBSE, but cases of candidates with attendance below 60% shall not be considered. It is stated in the counter affidavit of respondent No. 2 that since the petitioner had only 44.4% attendance, he would not be eligible to appear in the examination. It is further stated that since his attendance was below 60%, there was no possibility or scope for condensation of shortage of attendance in his case. Respondent No. 2 has also explained the reasons for insisting on a prescribed minimum attendance and also for not granting any relaxation beyond a certain limit.

7. The petitioner has filed a rejoinder to the counter affidavit of respondent No. 2. It is stated therein that the petitioner's case is a very hard case in the sense that the mother was suffering from slip disc during November 1996 and the petitioner himself suffered from jaundice. Thereafter before the mother could recover fully, the father of the petitioner took ill and suffered a heart attack .Being the only son of the parents and tender in age , the petitioner did not know what to do and opted to serve his parents. At time he could inform the authorities about his absence and at times he failed to inform the authorities about the absence. According to the petitioner, he is entitled to condensation of shortage of attendance and declaration of his result.

8. The petitioner has also filed rejoinder to the counter affidavit of respondent No. 1. It is stated in the said rejoinder that the petitioner could not attend school during November,1996 as he was not well and was suffering from jaundice. Thereafter, he could not attend the school because of the illness of his father. Being the only son of his parents he was so much involved during the illness of his father that he could not manage to attend the school. The mother also had not fully recovered from the problem of slip disc .The petitioner has also denied the allegation that he forged the signatures of his parents.

9. From the above mentioned averments of the petitioner and the respondents, it

is clear that the conduct of examination by the CBSE is governed by the examination bylaws of the CBSE and that the right of a student to appear in the examination depends on the satisfactory compliance with the provisions contained in the said bylaws. The petitioner has not questioned the applicability of the said bylaws. Nor has he challenged the legality and validity of the provisions contained in the said bylaws. Hence, ordinarily the right of the petitioner to appear in Class x examination conducted by the CBSE has to be decided in the light of the above mentioned examination bylaws of the CBSE. As pointed out in the counter affidavit of respondent No. 2, byelaw Nos. 12 and 13 of the examination bylaws provide that a candidate is eligible and entitled to appear in class x examination only if he has at least 75% of attendance in class x. Admittedly, the petitioner has only 44.4% attendance. Hence he is not eligible or entitled to appear in the examination as per the examination bylaws of the CBSE. Byelaw No. 14 provides for condensation of shortage of attendance. condensation of shortage of attendance is permitted only up to 15%. It is specifically provided that case of candidates with attendance below 60% shall not be considered. Hence there is no provision for condensation of shortage of attendance in the case of the petitioner. Therefore, I hold that in view of the provisions contained in the examination bylaws of the CBSE, the petitioner was not eligible or entitled to appear in Class x examination conducted by the CBSE in March, 1997.

10. I do not find any reason to exercise this Court's jurisdiction under Article 226 of Constitution of India in favor of the petitioner and to compel the respondent to ignore the provisions contained in the examination bylaws of the CBSE and to give a special treatment to the petitioner. The attendance of the petitioner is so low that one cannot think of permitting him to appear in the examination. The petitioner had not disclosed in the writ petition that the percentage of his attendance was so low. The petitioner had also not disclosed in the writ petition that the reason for his absence from the school was his illness or the illness of his mother. The only reason mentioned in the writ petition was the hospitalisation of the petitioner's father in the later part of December, 1996 and his continuance under medical supervision. It is only in his rejoinder that the petitioner had mentioned about his illness(jaundice) during November, 1996 and the illness(slipdisc) of his mother. This response came when respondent No. 1 alleged in the counter affidavit that respondent had intimated the parents of the petitioner on 28th November, 1996 about the shortage of his attendance and had invited them to discuss the matter in the school on 29th November, 1996 and that they did not meet the Principal as requested. It is significant that the petitioner has not denied the allegation of respondent No.1 that in response to the request dated 28th November, 1996, two letters were written to respondent No.1 in the name of the petitioner's mother but one of them appeared to have been written by the petitioner himself. The conduct of the petitioner as explained in the counter affidavit of respondent No.1 and the manner in which he made the pleadings in this case cannot inspire confidence and cannot persuade this Court

to exercise its discretionary jurisdiction in favor of the petitioner. The petitioner has not denied the fact that he had not attended any class during November and December , 1996 in spite of such continuance absence of two months, the petitioner or his parents did not meet the Principal to explain the reasons for the absence or submit any application for leave on medical grounds for the period when the petitioner was stated to have been suffering from jaundice. This failure on the part of the petitioner and his parents is sufficient to disentitle the petitioner for any special treatment or for any favourable order from this Court.

11. Hence, I am of the view that there is no merit in the writ petition and that it is liable to be dismissed.

12. According the writ petition is dismissed. There will be no order as to costs.