

(2024) 11 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : CWP No. 5851 Of 2021

Sanjana Chauhan

APPELLANT

Vs

Central Board Of Secondary Education And Anr

RESPONDENT

Date of Decision : 18-11-2024

Acts Referred:

Citation : (2024) 11 SHI CK 0015

Hon'ble Judges : Tarlok Singh Chauhan, ACJ; Satyen Vaidya, J

Bench : Single Bench

Advocate : Vikrant Chandel, Rita Goswami, Komal Chaudhary

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for following substantive reliefs:

i) That in view of the above mentioned facts and circumstances, the writ petition may kindly be allowed with the direction to the respondents to declare Rule 42(vi) ultra-virus and contrary to mandates of the Constitution of India or in alternative respondents may kindly be declared bound by the Rule of estoppel.

ii) That the respondents may kindly be directed to declare the result of the petitioner for Class 10+2 forthwith as withholding of the result of the petitioner may spoil the future of the petitioner.

2. The facts are not in dispute. Petitioner was a student of Class-X during academic session 2018-2019 in D.A.V. Public School, Sunder Nagar, District Mandi, H.P (for short, 'the School'). The 'School' was affiliated to Central Board of Secondary Education (for short 'CBSE')

3. Petitioner suffered compartment in the subject of mathematics. She appeared in the supplementary examination held by the CBSE in July/August 2019 but

remained unsuccessful.

4. Petitioner was admitted to Class-XI (10+1) by the School in the year 2019. The examination for Class-XI (10+1) was conducted in March/April 2020 and petitioner passed the said examination. In addition, petitioner also appeared in compartmental examination held by CBSE in March/April 2020 to clear compartment in subject of mathematics and also passed the same.

5. Thereafter, petitioner was admitted to Class-XII (10+2) in the same 'School' and she appeared in the final examination for Class-XII (10+2) held by CBSE in March/April 2021. However, her result was not declared on the ground that as per rule 42 (vi) of the CBSE examination bye-laws (for short, 'the Bye-laws') the petitioner was required to pass the subject of mathematics in first chance compartmental examination held in July/August 2019, failing which her provisional admission to Class-XI was to be treated as cancelled.

6. Aggrieved against the above decision of CBSE petitioner has filed the instant petition for the reliefs, as noticed above.

7. We have heard learned counsel for the parties and have also gone through the record of the case carefully.

8. Mr. Vikrant Chandel, learned counsel for the petitioner has contended that Rule-42 (vi) of Examination Bye-Laws of CBSE is harsh and oppressive, hence is required to be quashed as being violative of the Constitution of India. He also contended that Rule-42 (vi) of Bye-Laws was contrary to sub-rule (1) of the ibid rule. According to him, by narrow interpretation of sub-rule (vi), the provision of sub-rule (i) is rendered otiose and meaningless, whereby a candidate placed in compartment is allowed to avail three chances to clear the compartment extending up to the next academic year.

9. Another contention raised on behalf of the petitioner is that the future of petitioner is at stake as for non-fault of hers. The petitioner is being forced to repeat Class-XI examination.

10. The plea of estoppel has also been raised against CBSE for not having raised objection at earlier stage.

11. On the other hand, Ms. Rita Goswami, learned Senior Counsel for CBSE has submitted that the Bye-Laws framed by CBSE have force of law and these need to be implemented as it is in the interest of educational discipline. She submitted that Rule-42 (vi) of the Bye-Laws cannot be quashed merely on the ipse dixit of the petitioner.

12. Learned Senior Counsel for CBSE has also alleged that the petitioner after taking benefit under Rule-42 itself cannot be allowed to approbate and reprobate.

13. Rule-42 of Examination Bye-Laws framed by CBSE reads as under:-

"42. Compartment Examination for Secondary/Senior School Certificate

Examination.

(i) A candidate placed in compartment may reappear at the compartmental examination to be held in July/August and may avail himself/herself of the second chance in March/April next year and may further avail himself/herself of the third chance at the compartmental examinations to be held in July/ August of that year. The candidate will be declared 'Pass' provided he/she qualifies the compartmental subject/subjects in which he/she had failed.

(ii) A candidate who does not appear or fails at one or all the chances of compartment shall be treated to have failed in the examination and shall be required to reappear in all the subjects at the subsequent annual examination of the Board as per syllabi and courses laid down for the examination concerned in order to pass the examination. The candidate shall have the option to appear at the practical examination in the subjects involving practical or retain their previous marks in one more annual examination after the Third Chance Compartment.

(iii) Syllabi and Courses for the Compartmental candidates in March Examination shall be the same as applicable to the candidates of full subjects appearing at the examination.

(iv) A candidate placed in compartment shall be allowed to appear only in those subjects in which he/she has been placed in compartment at the Second Chance Compartmental Examination to be held in March/April next year.

(v) For subjects involving practical work, in case the candidate has passed in practical at the main examination he/she shall appear only in theory part and previous practical marks will be carried forward and accounted for. In case a candidate has failed in practical he/she shall have to appear in theory and practical both irrespective of the fact that he/she has already cleared the theory examination.

(vi) The candidate who is placed in Compartment in the Secondary School Examination (Class-X) shall be admitted provisionally to class XI till he takes in first chance Compartmental Examination to be held in July/August of that year. His/her admission shall be treated as cancelled if he/she fails to pass at the first chance Compartmental Examination."

14. One of the contentions raised by the petitioner is that she was not at fault and the culpability, if any, was that of the School and CBSE who had allowed the petitioner to continue in class XI and XII, despite existence of Rule 42 (vi) above. It has also been submitted that petitioner will be put to loss of precious years by strict interpretation and implementation of *ibid* rule.

15. In *Jigya Yadav Vs. Central Board of Secondary Education and Ors.* (2021) 7 SCC 535, Hon'ble Supreme Court has held the CBSE Examination Bye-Laws to be having force of law in following terms:

"117. Reverting to the CBSE Examination Byelaws, the same are couched in the form of a code. They provide for all essential aspects relating to formal education of a student including admission, examination, migration, transfer, curriculum, fee for various services, issuance of verified certificates, modifications in certificates etc. These Byelaws, therefore, bind the parties and are duly enforceable in a court of law, even by way of writ remedies as we have seen in the present batch of petitions.

118. To put it differently, the Byelaws of the Board have the force of law and must be regarded as such for all legal purposes. It would serve no meaningful purpose to hold these authoritative set of rules originating from an instrumentality of the State as mere contractual terms despite there being overwhelming public interest in their just application.

119. The argument that Byelaws of the Board are contractual elements as CBSE is a registered society unbacked by a statute cannot be accepted for at least four reasons – first, CBSE is not a private corporate body. It is a juristic person and a "State" within the meaning of Article 12, which in itself warrants its amenability to the courts including constitutional writ courts; second, the functions performed by the CBSE Board are public functions and not private functions; third, the test of "force of law" takes within its sweep the nature of rule, its authoritative impact on the subjects, nature of function performed by the rule making body, the origin of the body, the binding value of the rules, existence of any competing set of rules and fourth, absence of statute does not automatically render the rules to be contractual terms, as already observed."

16. The contention raised by petitioner needs rejection for the Examination Bye-Laws framed by CBSE have force of law, its strict implementation cannot be avoided merely on the ground of sympathy. The domain held by law cannot be subverted much less defeated by applying the principle of equity. In *Regional Officer, CBSE Vs. Kumari Sheena Peethambaran and Ors.* (2003) 7 SCC 719, Hon'ble Supreme Court has held as under: -

6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions. A few decisions on the point may be perused. In *C.B.S.E. v. P. Sunil Kumar* (1998) 5 SCC 377 the institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not affiliated to the Board, hence the students were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim orders granted by the Court in contravention of the rules and regulations of the Board. The High Court considering the matter sympathetically had not interfered, but this Court

observed thus:

"But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students."

The order of the High Court was set aside. Another decision reported in *Guru Nanak Dev University v. Parminder Kr. Bansal* (1993) 4 SCC 401, a three-Judge Bench decision, was relied upon in the case of *Sunil Kumar* (1998) 5 SCC 377. A passage from the abovenoted decision was also quoted therein which reads as follows:

"We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

Yet another decision referred to is reported in *A.P. Christians Medical Educational Society v. Govt. of A.P.* (1986) 2 SCC 667, again a three-Judge Bench decision. It was observed in this case:

"We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

The above-referred matter relates to the admission and examination of MBBS courses.

17. The above being mandate of law has to be complied with. Petitioner cannot escape its consequence merely on the ground that her valuable period of life shall be wasted.

18. In addition, the petitioner has sought quashing of Rule-42(vi) of Examination Bye-Laws of CBSE on the ground that it is contrary to Rule 42(i).

19. We do not find any merit in the above contention raised on behalf of the petitioner. The provision of sub rule (i) of Rule-42, no doubt allows three opportunities to a candidate to clear compartment and such three chances can extend up to next academic year, nonetheless such provision cannot be said to be contrary to Rule-42 (vi) in any manner for the reason that both apply in different realms. Rule-42(i) allows a candidate to pass Class-X compartment examination in three chances. If the candidate fails to clear the Class-X compartment examination in all the three chances, he/she has to repeat class X. On the other hand, if the candidate clears the compartmental examination held in July/August of the same year in which he/she had taken the main examination, he /she is entitled to be promoted to the next class i.e. Class-XI without repeating Class-X. In the third eventuality as had taken place in the facts of case on hand, the petitioner does not get right to be promoted to the next higher class i.e. Class-XI but has not to repeat Class-X.

20. Thus, the result is that in the first event as detailed above, the candidate has to repeat Class-X. In 2nd and 3rd events, the candidate has not to repeat Class-X but gets promoted to Class-XI only if he/she clears the compartmental examination in the first chance in the same year in which the main examination was taken. In that event he/she has not to waste any academic year, whereas in the other case one academic year is lost.

21. Except as above, we have not found any other ground having been pleaded to seek declaration of impugned rule 42 (vi) of Byelaws ultra-vires. In *Union of India and Ors. Vs. Manjurani Routray and Ors.* (2023) 9 SCC 144, it has been observed by Hon'ble Supreme Court as under:-

"It is trite law that for striking down the provision of law or for declaring any rule as ultra-vires, specific pleading to challenge the rules and asking of such relief ought to be made....."

22. Learned counsel for the petitioner has placed reliance on the judgment passed by learned Single Judge of Punjab and Haryana High Court in the matter of *Jyoti and Others Vs. Central Board of Secondary Education* and Another CWP No. 18460 of 2021, decided on 22.02.2022 and another judgment passed by learned Single Judge of Delhi High Court in the matter of *Liya Belliappa Vs. UOI*, decided on 08.02.2002, to contend that in identical circumstances, both the Courts have taken a sympathetic view in favour of the candidates (petitioners therein). We have gone through the aforesaid judgments and have found no reason to be persuaded to take a view different than as discussed above. We have already concluded that the provision of law is to be applied as it is and cannot be avoided merely on the ground of equity or sympathy.

23. We also are not in an agreement with the contention of the petitioner that the CBSE is estopped from refusing to declare the result of petitioner as it had not raised any objection at any earlier point of time. Admittedly, the admission was granted to the petitioner in Class-XI by the School administration. The CBSE

had pointed out the flaw, when the documents came to its scrutiny. Even otherwise the language of Rule-42(vi) is couched in a way that its consequence is automatic. In case the compartmental examination is not cleared by the candidate in the same year in which the main examination was taken, his/her provisional admission to the next Class has been mandated to be treated as cancelled. The term used in said provision is "shall" which cannot be read as directory keeping in view the context in which it has been used.

24. In view of above discussion, we find no merit in the petition and the same, is accordingly, dismissed. No order as to costs.

25. Pending miscellaneous application(s), if any, shall also stand disposed of.