
(2012) 02 KL CK 0168

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31687 of 2011

Sarath Chandran, V.

APPELLANT

Vs

Central Board of Secondary Education and another

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : (2012) 2 ILR (Ker) 540

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : K.V. Sadananda Prabhu and Sri M.D. Sasikumaran, for the Appellant; K.S. Hariharaputhran and Sri Devon Ramachandran, (S.C. for C.B.S.E.), for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice T.R. Ramachandran Nair

1. The petitioner seeks for a direction to the first respondent to allow his daughter to pursue her studies in Class XII in the second respondent's school. Mainly, it is contended that a detention from appearing in Class XII examination is objectionable. The stand taken by the second respondent in their counter-affidavit is that the petitioner's daughter did not obtain the required 33% marks for Chemistry and Mathematics in Class XI examination and therefore she was not eligible to be promoted to Class XII.

2. This Court had passed an interim order dated 16-12-2011 rejecting the prayer of the petitioner to allow his daughter to attend Class XII as an interim measure. Now the examination for Class XII is to start from the first week of March, 2012 and the petitioner seeks permission to appear for the examination.

3. Learned counsel for the petitioner submitted that detention of a student is objectionable in law. The petitioner's daughter is a bright student and in May, 2011 the grand-mother of the child became seriously ill and expired on 2-5-2011. This affected her preparation for the internal examination of Class XI.

After the permission was refused, representations were filed before the first respondent and Ext. P-3 is the reply given stating that she has failed in two subjects, viz. Chemistry and Mathematics and therefore the question of promotion does not arise.

4. Learned counsel for the petitioner submitted that Clause 1.16 of Senior School Curriculum providing that "in no case the Heads of affiliated schools shall detain eligible candidates from appearing at the examination of the Board" will apply herein in favour of the student. It is submitted that Board Examinations are held in Standards X and XII and the internal examinations cannot have a detrimental effect on the prospectus of the students. It is submitted that a student may fail for different reasons and even for not giving proper instructions also. The real merit of a student has to be assessed in the Board Examination and therefore the detention of the student cannot be supported.

5. In the counter-affidavit filed by the second respondent it is pointed out that the school is affiliated to the first respondent Board and it is governed by the bye-laws, circulars, rules and directives issued by the Board. Reliance is placed on clause 7.5 of Senior School Curriculum, 2012 which is applicable for the academic year 2010-2011 of Class XI for the Board Examination to be held in 2012. Going by the same, a pass in Class XI examination is required for promotion. Again, in clause 40.1(vi) also it is stated that a candidate shall obtain 33% marks in all the subjects. It is pointed out that clause 1.16 only prohibits detention of eligible candidates from appearing in the Board Examination and herein the daughter of the petitioner was not an eligible candidate. It is also pointed out that for writing the Examination of March 2012, registration of students had to be made in September, 2011 which is already over.

6. Learned counsel for the petitioner relied upon certain observations made by this Court in *Nikitha Basheer v. Central Board of Secondary Education* 2009 (4) KLT 747 to contend for the position that the said observations will support the plea of the petitioner. Particular reference was made to paragraphs 16 and 17.

7. The relevant clauses of the Senior School Curriculum, 2012, a copy of which was made available by the learned counsel for the respondents, deals with admission to Classes XI and XII and other matters. Clauses 6.4, 6.5, 7.5(i) and (ii), 15 and 40.1(h) are reproduced below:

"6.4 No student shall be admitted or promoted to any subsequent higher class in any school unless he has completed the regular course of study of the class to which he was admitted at the beginning of the academic session and has passed the examination at the end of the concerned academic session, qualifying him for promotion to the next higher class.

6.5 No student shall be admitted in Class XI and above in a school affiliated with the Board after 31st day of August of the year except with prior permission of the Chairman, CBSE/Competent Authority as may have been defined in the State/ Union Territory Education Acts. The application for permission to grant admission

after 31st August shall be routed through the Principal of the School specifying the reasons which are unavoidable. The candidate shall complete the required percentage of attendance (75%) for Class XI & XII as per Examination Bye-laws of the Board to make him/her eligible for the examinations. In such cases where the admission by the candidate could not be taken in a higher class by the stipulated date because of the late declaration of result by the Board such permission would not be required, provided the candidate applied for admission within a fortnight of the declaration of the result.

7.5(i) No admission shall be taken in Class XII directly. Provided further that admission to Class XII in a school shall be open only to such a student who:

(a) has completed a regular course of study for Class XI; and,

(b) has passed Class XI examination from a school affiliated to this Board.

7.5(ii) A student who has completed a regular course of study for Class XI and has passed Class XI examination from this Board or an institution recognised by/affiliated to any recognised Board in India can be admitted in Class XII to a school only on transfer of the parent(s) or shifting of their families from one place to another, after procuring from the student the mark sheet and the Transfer Certificate duly countersigned by the Educational Authorities of the Board concerned. In case of such admissions, the schools would obtain post facto approval of the Board within one month of the admission of the student.

15. Detaining of Eligible Candidates

In no case the Heads of affiliated schools shall detain eligible candidates from appearing at the examination of the Board.

40.1 (ii) In order to be declared as having passed the examination, a candidate shall obtain a grade higher than "E" (i.e. at least 33% marks) in all the five subjects of external examination in the main or at the end of the compartmental examination. The pass marks in each subject of external examination shall be 33%. In case of a subject involving practical work a candidate must obtain 33% marks in the theory and 33% marks in practical separately in addition to 33% marks in aggregate in order to qualify in that subject."

Going by clause 6.5, a candidate shall complete the required percentage of attendance (75%) for Class XI and XII as per Examination Bye-laws of the Board to make him/her eligible for the examinations. Therefore, going by clause 6.4, for promotion, one has to complete the regular course of study of the class to which the student is admitted and will have to pass the examination at the end of the concerned academic session. Under clause 7.5, for admission to Class XII, a student has to complete the regular course of study for Class XI and has to pass Class XI Examination. The required percentage of attendance is 75% and the marks required, going by clause 40.1 (ii), is at least 33% for a candidate to have passed the examination. The pass marks in each subjects shall also be 33%.

8. In fact, I had occasion to consider the effect of these clauses in Nikitha Basheer's case 2009 (4) KLT 747. Therein, the school prescribed a minimum of 40% marks for all class examinations for the purpose of promotion. After referring to the very same scheme, along with the provision under clause 1.16 for detaining eligible candidates, it was held in para 9 as hereunder

"Therefore, it can be safely concluded that what is provided under these clauses is only that the student will have to complete the regular course of study and then appear for Class XI examination at the end of the academic session which will enable him to get admission in Class XII, if he obtains the prescribed percentage of 33."

The argument by the school that they can have a higher prescription with regard to the pass mark, was rejected and it was held in para 16 as follows:

"Of course, the purpose of other internal examinations can be well appreciated but that cannot have a detrimental effect as far as the eligibility to get promotion to Class XII is concerned."

Finally, in para 17, it was held thus:

"17. In fact, the curriculum and the scheme prescribed by the CBSE will show that they have fixed standards like required attendance and minimum marks, etc. uniformly. These are with the obvious purpose to have an All India pattern also, since Class X and Class XII Examinations are conducted on All India basis. When the standards prescribed by the CBSE ensures uniformity in the entire country, the said method alone can be followed by the school in a matter like this where a student is seeking promotion to Class XII. There is nothing to show that schools affiliated to CBSE have got freedom to fix different standards in such cases. Even in the prospectus no specific clauses have been provided to that effect except the provision for detention. In fact, the said provision under the heading "Detention" referring to mid-term tests, terminal examinations and annual examinations, has to be understood in the light of the specific clauses in Ext. P-3. Otherwise, the provisions contained in Ext. P-3 will be rendered otiose. The concept of detention has been frowned upon in academic circles and even under the scheme Ext. P-3 in para 1.16 it is clearly stated that in no case the Heads of affiliated schools shall detain eligible candidates from appearing at the examination of the Board. Therefore, when a candidate who has obtained 33% marks is clearly an eligible candidate for promotion to Class XII, that candidate cannot be detained at all. In that view of the matter also, the stand taken by the second respondent cannot be accepted."

The sentence that "In fact, the said provision under the heading "Detention" referring to mid-term tests, terminal examinations and annual examinations," and the later sentence, viz. "The concept of detention has been frowned upon in academic circles and even under the scheme Ext. P-3 in para 1.16....." have been relied upon by the learned counsel for the petitioner to show that this Court actually has frowned upon the concept of detention itself.

9. In fact, this Court was only considering the requirement for obtaining 33% marks in the said judgment. It is in that context it was held that in para 1.16 there is a provision that eligible candidates cannot be detained. A candidate who obtained 33% marks will be an eligible one. Accordingly, it was held that a more higher percentage of marks like 40% cannot be provided by the school. Hence, 33% marks are required for promotion.

10. Therefore, it is not as if this Court was entering a finding on the provision for detention. In clause 15 in the present Examination Bye-laws, what is provided is that eligible candidates cannot be detained at the examination of the Board. If we consider this along with the clauses 6.4, 7.5 and 40.1(ii), it can be seen that a candidate will be eligible only if the he/she obtains 33% marks. Such a candidate cannot be detained which is the prescription in clause 15. Herein, the petitioner failed in the examinations of Class XI for making her eligible for promotion to Class XII, which fact is not under dispute. The contention that the examination in Class XI is not mandatory to be gone into by the student, and that even if the student did not obtain 33% marks, the student cannot be denied the opportunity to appear for the Board Examination, cannot be accepted. The examination bye-laws under Senior School Curriculum are not under challenge here. The requirement to have a pass in Class XI is clearly provided in the Curriculum. That is the minimum standard prescribed for enabling the students to get promotion in Class XII and to appear in the Board Examination. A standard thus fixed cannot be said to be against any norms or in violation of any fundamental rights. The minimum eligibility standard fixed thus for appearance in the Board Examination, will have to be appreciated in the light of the general scheme. Even though the Board Examinations are only in Classes X and XII, for enabling the students to appear for the said examinations, the eligibility standards can be prescribed which alone are contained in the Senior School Curriculum. It is not as if the student is detained for ever. There are provisions under the Curriculum itself requiring the minimum of attendance and minimum pass marks. That cannot be held to be arbitrary or illegal on any account. In fact, under clause 40.2, eligibility for Compartment in Senior School Certificate Examination, has also been provided. But herein, the situation is different. Therefore, the said provision cannot come to the aid of the petitioner.

11. Even though Shri Sadananda Prabhu, learned counsel for the petitioner submitted that automatic promotion is the rule for appearing in Board Examination, I cannot agree. Clause 1.16(15) clearly goes against the claim of the petitioner. It is not as if a student who gets whatever marks, is eligible for promotion and appearance in the examination conducted by the Board. Of course, the petitioner has pleaded certain family problems for the failure of the daughter to get the pass marks. But that is different from saying that no minimum marks should be fixed in the Curriculum. The school has only obeyed the Senior School Curriculum of the C.B.S.E, going by the counter-affidavit and the pleas of the petitioner were also rejected by the Board by Ext. P-3. As far as the Board Examination which starts from 1st March, 2012 is concerned, already

registrations are over in September, 2011. Therefore, this Court will not be justified in allowing the petitioner's daughter to appear in the Board examination which starts in the first week of March, 2012, even though learned counsel vehemently prayed for grant of such a direction.

For all these reasons, the writ petition is dismissed. The petitioner can approach the school for appearance in Class XI examination as per the Curriculum. No costs.