

(2020) 10 OHC CK 0003

In the Orissa High Court

Case No : Writ Petition (C) NO. 16987 Of 2020

Shamshad Begum & Another

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 09-10-2020

Acts Referred:

Citation : (2020) 10 OHC CK 0003

Hon'ble Judges : K.R. Mohapatra, J

Bench : Single Bench

Advocate : D.P. Nanda, V. Narasingh, S. Das, S. Devi, B.B. Choudhury, A.P. Bose, T.N. Pattnaik, S. Patjoshi, D.K. Mohanty

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. Due to outbreak of COVID-19, this matter is taken up through Video Conferencing.

2. The prime question involved in this writ petition is with regard to promotion of the petitioner no.2 from Class-XI to Class-XII who is prosecuting his

studies (Commerce Stream) in Delhi Public School, Kalinga, Adhalia, Cuttack (for short the School).

3. Short narration of the fact relevant for just and effective adjudication is that the petitioner no.2, who is the son of petitioner no.1, took admission in

Class-XI in the School during the academic session 2019-20. Unfortunately, the petitioner no. 2 was taken into custody on 17.02.2020 in connection

with Saheed Nagar P.S. Case No. 87 of 2020. Subsequently, he was released on bail pursuant to the order passed by this Court on 16.03.2020, which

was further modified vide order dated 19.03.2020. In the meantime, the Annual

Examination of Class-XI was conducted by the School with effect from 18.02.2020. As the petitioner no.2 was in custody at the relevant period, he could not appear in the said Annual Examination of Class-XI. On 22.03.2020, Nation Wide Lockdown was imposed due to outbreak of COVID-19 and the petitioners could submit representation only on 17.06.2020 requesting the school authorities (opposite parties 5 and 6) to allow the petitioner no. 2 to appear in the re-test of Annual Examination of Class-XI, which was scheduled to begin from 01.07.2020. But, the petitioner no.2 was not allowed to appear in the said examination as he had not approached the school authorities earlier. The petitioners had also approached the Odisha Human Rights Commission, Bhubaneswar agitating their grievances and by order dated 26.06.2020, the Commission requested the opposite parties 5 and 6-school authorities to consider the case of the petitioner no.2 and allow him to appear in the re-test Annual Examination of Class-XI, but to no effect. As such, the petitioner no. 2 could not appear in the said re-test Annual Examination of Class-XI. Thereafter, the petitioners have approached this Court in the present writ petition seeking a direction to the opposite parties 5 and 6 to allow the petitioner no. 2 to appear in the re-test Annual Examination of Class-XI. This Court vide interim order dated 17.07.2020 directed the opposite parties 5 and 6 to provide the Id & Password to the petitioner no.2 for enabling him to access to the Online classes of Class-XII (Commerce Stream). Since then, although the petitioner no.2 is attending classes, but the school authorities did not also allow him to sit in the 1st Semester Examination of Class-XII as there was no such direction in the interim order and the petitioner no.2 is not promoted to Class-XII. It is submitted at the Bar that the Test/Half Yearly Examination of Class-XII (Commerce Stream) will commence from 12.10.2020. But, the school authorities are not allowing the petitioner no.2 to sit in the said examination of Class-XII as he has not cleared the re-test Annual Examination of Class-XI as well as 1st Semester Examination of Class-XII.

4. Mr. Nanda, learned Senior Advocate appearing for the petitioners by filing an additional affidavit has brought to the notice of this Court to the â??Press Releaseâ?? dated 01.04.2020 issued by the Central Board of Secondary Education (CBSE) as at Annexure-14. He referred to Clause-2 of the said â??Press Releaseâ?? which reads as follows:

2. For classes 9 and 11: It has come to our notice that though several schools affiliated to CBSE have completed their examination,

evaluation and promotion process for students who were studying in grades 9 and 11 in the 2019-20 academic session, there are several

schools that have not been able to do so. This includes among others, Kendriya Vidyalayas, Navodaya Vidyalayas, State/UT Government

schools, private schools, schools located in India and abroad, etc. All such schools are advised to promote students of grades 9 and 11 to

the next grades on the basis of all the school-based assessments including project work, periodic tests, term exams. etc. conducted so far.

For any child who is unable to clear this internal process, (in any number of subjects), the school may utilize this period for providing

remedial interventions, and school may give the opportunity of appearing in school-based test/s, online or offline. The promotion of such

children may be decided on the basis of such tests.

Mr. Nanda also relied upon the notification dated 13.05.2020 issued by the CBSE as at Annexure-12, which reads as under:

CENTRAL BOARD OF SECONDARY EDUCATION

CBSE/CE/2020 DATE: 13.05.2020

Notification

The whole country is facing a challenging time due to Covid-19. This is an unprecedented situation. Children are confined at home. Their

schools are closed. They are experiencing mental stress and anxiety. Parents are worried about salaries, health of family etc. In this difficult

time, children who have not been able to clear school examinations will be even more upset. The queries of such students are constantly

being received by CBSE. Queries from parents are also being received continuously. At such a difficult time, all of us will have to make joint

efforts to relieve students from stress and to help them to mitigate their anxiety.

CBSE, in view of the requests of the parents and students, as a one-time measure in extraordinary situation has decided that all the failed

students of 9th and 11th will be provided an opportunity to appear in a school-based test again. Opportunity will be extended to students

irrespective of whether their examinations have been completed and the exam results have been released or their exams have not been

completed. This facility is to be extended irrespective of number of subjects and attempts.

Schools by providing remediation to such students can conduct online/offline/innovative tests and may decide promotion on the basis of this

test. This test can be taken in all subjects in which students have failed. Before holding the test, the schools will give sufficient time to the

students to prepare. Therefore, all schools affiliated to CBSE will provide an opportunity to all the failed students of classes 9th and 11th

for all subjects where students have failed. It is once again reiterated that this exemption is to be extended to all the students even if they

have been given the opportunity earlier to this notification also.

This one-time opportunity is being extended only in current year in view of the unprecedented conditions of Covid-19. This benefit is a

onetime measure and will not be extended in future.â??

Sd-Dr. Sanyam Bhardwaj,

Controller of Examinationsâ??

He, therefore, submits that the school authorities without conducting any re-test ought to have promoted the petitioner no.2 from Class-XI to Class-XII

on the basis of the school-based assessment as per the Press Release (Annexure-14). The school authorities may also conduct a special examination

of the 1st Semester of Class-XII, so that the petitioner no.2 can appear such test. He also prays for allowing the petitioner no.2 to appear in the

Test/Half Yearly Examination of Class-XII, which is scheduled to be held with effect from 12.10.2020.

5. Mr. Bose, learned counsel for the opposite parties 5 and 6-School submits that the petitioners are all-throughout negligent and due to their callous

attitude and negligence, the petitioner no. 2 has lost his opportunity to appear in the re-test Annual Examination of Class-XI and the academic career

of the petitioner no.2 is at stake. The school authorities are always interested to build the academic career of the students and not to spoil their future.

Since the petitioner no.2 did not avail the opportunity when it was available to him, he cannot be allowed to sit in the aforesaid examinations, as prayed

for. He further submits that the petitioner no.2 cannot take the assistance of either the Press Release as at Annexure-14 or the notification dated

13.05.2020 as at Annexure-12. The notification under Annexure-12 is applicable

to the students who have appeared and failed in the examination conducted by the School. But, the petitioner no.2 had neither appeared in Annual Examination of Class-XI held in February nor in the re-test conducted in the month of July, 2020. Thus, he cannot be permitted to appear in any special examination. He, therefore, submits that although the school authorities have all sympathy for the students including the petitioner no. 2 and are ready and willing to extend all possible help for his betterment and build up a good academic career, they are helpless for the aforesaid reasons.

6. Mr. Pattnaik, learned counsel for the opposite parties 2 and 3-CBSE submits that upon receiving notice of this writ petition, the CBSE made a query from the Principal of the School on 21.09.2020 as at Annexure-13 and requested the school authorities to intimate as to whether the petitioner no.2 was given any opportunity according to the circular dated 13.05.2020, but the same has not yet been replied. It is further clarified by Mr. Pattnaik that since the Annual Examination of Class-XI as well as the re-test have been conducted at the school level, the CBSE has no say in the matter. However, it is ready and willing to carry out the direction if made by this Court in this writ petition.

7. Taking into considerations the submissions of learned counsel for the parties, this Court observes that the educational institutions must take all possible measures to build up the career of the students. They should not stand as a stumbling block, particularly when the academic career of a student is at stake. From the submissions made, it appears that the petitioners had approached the school authorities on 17.06.2020 to allow the petitioner no.2 to appear in the re-test Annual Examination of Class-XI, which was scheduled to commence from 01.07.2020. But, for the reasons stated above, the petitioner no. 2 was not allowed to sit in the said re-test examination for which he could not be promoted from Class-XI to Class-XII, which do not appear to be justified. Although the petitioner no.2 was allowed to prosecute his studies in Class-XII pursuant to the direction of this Court vide order dated 17.07.2020, but he was not allowed to appear in the 1st semester examination of Class-XII as he has not cleared the class promotion Examination of Class-XI. The circular dated 13.05.2020 at Annexure 12 makes it abundantly clear that all the failed students of 9th and

11th will be provided an opportunity to appear in a school-based test again. Opportunity will be extended to students irrespective of whether their examinations have been completed and the examination results have been released or their examinations have not been completed. This facility is to be extended irrespective of number of subjects and attempts. In the case at hand, the petitioner no.2 could not appear in the Annual Examination of Class-XI, as he was in custody in connection with Saheed Nagar P.S. Case No. 87 of 2020. By the time he was released on bail, the said examination was over. Subsequently, the petitioners represented the school authorities on 17.06.2020 to allow the petitioner no.2 to sit in the re-test scheduled to commence from 01.07.2020. But, the petitioner no.2 could not appear in the said re-test examination of Class-XI as he was not allowed by the school authorities for the reasons stated above. The tenor and purport of the notification under Annexure-12 makes it clear that the notification has been issued to see that no student should be in mental stress and anxiety for non-appearance or failure in the examination. It is clear from the submissions of learned counsel for the parties that the petitioner no. 2 was not promoted from Class-XI to Class-XII, which indicates that he has failed in school based class promotion Examination of Class-XI due to his non-appearance. As such, he is entitled to be given another opportunity to clear the promotional examination of Class-XI. It is more so because the petitioner no.2 had no contribution for his non-appearance in the Annual Examination of Class-XI or in the re-test conducted by the School and for that reason in the 1st Semester of Class-XII.

8. Taking into consideration the facts and circumstances of the case, this Court is of the considered opinion that in order to save the academic career of the student, a special examination should be conducted by the school authorities for the petitioner no.2 to appear in the class promotion Examination of Class-XI and 1st Semester Examination of Class-XII. Accordingly, it is directed that the school authorities shall conduct a special examination through Online/Offline for the petitioner no.2 to appear in the class promotion Examination of Class-XI for his promotion from Class-XI to Class-XII as well as in the 1st Semester Examination of Class-XII. In the meantime, the petitioner no.2 shall be allowed to appear in the Test/Half Yearly Examination of Class-XII (Commerce Stream) which is scheduled to commence from 12.10.2020 and shall be provided with the link as well as all

other online/offline facilities for appearing in the said examinations and publication of the result. The special class promotion Examination of Class-XI

and 1st Semester Examination of Class-XII shall be held giving a clear 15 days notice to the petitioner no.2. It is further made clear that the school

authorities shall take all possible steps to regularize the academic career of the petitioner no.2.

9. With the aforesaid observation and direction, this writ petition is disposed of.

10. Consequently, all the interim applications are disposed of accordingly.