

(2013) 09 DEL CK 0447

In the Delhi High Court

Case No : Writ Petition (C) 4187 of 2013 and CM 12972 of 2013

Shivam Sharma

APPELLANT

Vs

The Directorate of Education and Another

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0447

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Lal Singh Thakur, for the Appellant; Vineet Mehta, for R-2 and Ms. Bandana Shukla for Ms. Ruchi Sindwani for R-1, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner was studying in Vivekanand Public School and appeared in various units and other examinations in the aforesaid class. As per the final report card, he obtained 36.9 percent marks in English, 4.9 marks in mathematics, 30.3 marks in Economics, 31.1 marks in the Business Studies and 35.4 percent in Accountancy. The petitioner had also opted Physical Education as an additional subject and he got grade-B in the aforesaid subject. Since the petitioner was not promoted to class -XII, he is before this Court by way this writ petition, seeking a direction to the respondent no. 2 Vivekanand Public School to admit him in class-XII and allow him to attend the class XII during the rest of the academic session. He is also seeking a direction to allow him to attend classes of intermediate. Clause 2.5(iv) of Pass Criteria of CBSE and Rules 29 and 32 of Promotion Rules notified by Directorate of Education which are relevant for the purpose of deciding this writ petition read as under:

Clause 2.5(iv) of pass criteria of CBSE Sr. School curriculum 2009:- Candidates offering additional subjects norms mentioned under Clause 2.5(iv) of pass criteria of CBSE Sr. School curriculum 2009 are being followed:

a. A language offered as an additional subject may replace a language in the

event of a candidate failing in the same provided after replacement the candidates has Eng/Hindi as one of the languages.

b. An elective subject offered as an additional subject may replace one of the elective subjects offered by the candidate it may also replace a language provided after replacement that candidate has Eng/Hindi as one of the languages.

c. Additional language offered an elective level may replace elective subjects provided after replacement the no. of languages offered shall not exceed two.

Rule 29 of Promotion Rules for class XI:-"In order to declare pass, a student must secure must 33% marks in each of the subject studied by him/her subject to the condition that:-

1. The student should secure 33% marks in each of the following subjects:-

1. Language (Core/Elective) 2, 3, 4 and 5 any four subjects under any stream which may include language as well.

2. He/she secures 33% marks separately in theory and practical portion.

3. The promotion is also subject to the condition that a minimum of 25% marks should be secured in the comprehensive test i.e. annual.

Rule 32 of Promotion Rules for Class XI:

Compartmental Examinations:

A student who has appeared in comprehensive exam but is not eligible for promotion to next class is eligible for appearing in the compartmental examination provided:

1. He/she has secured at least 20% marks in 1 failing subject i.e. (20 or more out of 100) or in case the candidate gets at least 15% of marks in one failing subject (i.e. cases where marks are ≥ 15 but < 20) and 40% marks in aggregate in the remaining subjects, he/she is also eligible for appearing in compartmental examination.

2. For practical subjects, the rule is generally interpreted as follows (as per CBSE norms)-

a. If a student has failed in theory, compartment is given in theory only.

b. If a student has failed in practical, he/she has to appear both in theory and practical.

2. It would thus be seen that the benefit of grace marks under Rule 35 of the Promotion Rules can be claimed if the student has obtained minimum of 25% marks in each of the subjects at the comprehensive test as per Rule 29. A perusal of Rule 29 would show that comprehensive test means the annual test. In my opinion, annual comprehensive test would comprise the marks of Unit-1 half yearly examination, the other two units as well as the final examination, and

only the final examination does not constitute the annual comprehensive test. If we look at the report card of the petitioner, it would be noticed that in mathematics he obtained 4.9% marks, at the annual test. Therefore, in terms of Rule 35 of the Promotion Rules, he is not entitled to any grace marks.

3. The contention of the learned counsel for the petitioner, however, is that it is only the marks obtained in the final examination which have to be seen for the purpose of deciding whether a person has obtained 25% marks in all the subjects in terms of Rule 29 of the Promotion Rules or not. Though I am unable to agree with the learned counsel for the petitioner, even if his marks in mathematics in the final examination is seen, it would be noticed that he does not have 25% marks in mathematics even in the final examination.

4. The learned counsel for the petitioner also submits that since under Clause 2.5(iv), the petitioner is entitled to replace any subject by the additional subject opted by him, the petitioner should be allowed to replace mathematics by Physical Education and if that is done, he would be entitled to grace marks since he has obtained Grade-B in Physical Education. I, however, find no merit in the contention. The language of Rule 29 of the Promotion Rules is wholly unambiguous and does not admit of the interpretation suggested by the learned counsel for the petitioner. What has to be seen is whether the candidate obtained at least 25% marks in each of the subject for which he appeared in the examination or not. No subject in which the candidate has taken examination can be excluded for the purpose of Rule 35 of the Promotion Rules. Therefore, the marks obtained by the petitioner in mathematics cannot be kept aside for the purpose of determining his eligibility in terms of Rule 35 of the Promotion Rules.

Since the petitioner did not obtain a minimum of 25% marks in mathematics, he certainly is not entitled to grace marks in terms of Rule 35.

Since the petitioner is not entitled to grace marks, he having failed in as many as four subjects, he cannot be promoted to Class XII. The writ petition is devoid of any merit and is hereby dismissed.

There shall be no orders as to costs.