

(1959) 03 MP CK 0004

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Petition No. 7 of 1959

Shobha Bhatnagar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-03-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Bharat Board of Secondary Education Act, 1950 — Section 16

Citation : AIR 1959 MP 367 : (1960) 5 MPLJ 581

Hon'ble Judges : Shiv Dayal Shrivastava, J;H.R. Krishnan, J;A.H. Khan, J

Bench : Full Bench

Advocate : Harihar Nivas Divedi, for the Appellant; T.S. Mongre, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

H.R. Krishnan, J.

This is an application under Article 226 of the Constitution by a private candidate for the Intermediate Examination to be held in March, 1959 by the M. B. Board of Secondary Education. The Board has got full discretion in allowing or disallowing any private candidate to take the examination. But actually, this candidate has been refused permission to sit for the examination on the ground that she was disqualified under Reg, 5 in Chapter XIII of the statutory regulations of the Board :

"Private candidates who have failed to obtain promotion to the highest class of any school or Intermediate College (i.e. those who have been detained in Class IX or Class XI) shall not be admitted to the next ensuing High School or Intermediate Examination respectively.

Every year in the beginning of the session, the Heads of institutions recognised by the Board shall send to the Secretary of the Board a list of students, who have been detained in Class IX and Class XI containing the student's name, his

age, his father's name, place of residence and guardian's name."

The petitioner avers that but for this disqualification the Board would have permitted her and that this disqualification is based on a misapplication of the rule which really does not exclude her. Accordingly, she has prayed that the Board should be directed to permit her to sit for the examination and advised that the rule does not apply to her in the circumstances set out in the application and to be examined presently.

Just before the hearing, a petition was moved making fresh averments of fact, but I shall examine them towards the end. The Board is a statutory Board acting under Regulations which have been made under a statute, and as such it is amenable to this Court's direction in the event of a finding that it has committed a mistake in interpreting or applying a regulation. If, on the contrary, the interpretation put by the Board is a correct one, or at least one of two equally plausible views, this Court would not interfere by thrusting its opinion on a statutory body.

The petitioner joined one of the approved colleges in March, 1957 in what is called the 1st Year or Class XI. It was the session preceding the one at the end of which is held the examination in which she wants permission to appear. She did not complete the academic year, but left in October, 1957. The reason was that her father was transferred from Gwalior. Nor could she petitioner join a college at the new station Mandleshwar which does not have a college at all. After about a year she sent on her application to the Board for the examination of March, 1959 and was told that she had studied in an approved college namely "Kamla Raja", and failed to secure promotion to the next year, in other words, had been "detained" in class XI, which is also called the 1st year Intermediate. After some correspondence between the petitioner's father and the Board she filed the present application, in the end of January 1959

The only question is whether a candidate leaving in the middle of the session, without taking the promotion examination that is usually held at the end of the session, is one who has "failed to secure promotion" or "who has been detained." This question has been argued at such a considerable length & elaborateness that is quite out of proportion to its simplicity. The phrase in the brackets is, as it were, an explanation of "failed to obtain promotion." It does happen often that an explanation is not co-extensive with what it seeks to explain, but that is not the position here. Failing to obtain promotion is, in my opinion, synonymous with being detained.

In fact, "promotion" according to the dictionary (O. E. D.) is going farther or beyond, while "detention" is being stopped from going beyond. The fact that the petitioner obtained a transfer certificate and was, in fact, entitled to a transfer certificate makes no difference, because detention" is with reference to the class and not the college. In other words, she has left the college and nobody could prevent her from leaving it) but she left in the same class in which joined and, if

at any time she wanted to seek admission in the same or another college she would be admitted to that college not beyond or above it. That is, what is meant by saying that she is "detained" in the same class, but not necessarily in the same college.

The "detention" is, as it were, the antonym, of "promotion" the one implying stoppage or obstruction of going beyond a point, while the other implies permission to move beyond that very point. It has been argued on behalf of the petitioner that the word "fail" has been used elsewhere in the regulations and that implies that the person concerned has actually taken an examination. I note that in those contests" the "failure" is not a failure to obtain promotion, but a failure to pass an examination.

The petitioner's fallacy is that she fails to distinguish the difference between failure in an examination and failure to obtain promotion. The former term obviously implies that the person takes the examination and then fails; while the latter does not necessarily assume an examination, because it is perfectly easy to fail to obtain a promotion without failing in an examination, or even going anywhere near the examination hall. The matter is simple enough, but it has been argued at length and ingeniously. If one can compare: the examination itself to a gate in a hedge, the person who sits for the examination is one who tries to get through that gate. If he passes it, he gets through it. If he fails he stacks at the gate.

He fails to pass the examination. But he is not the only one that is detained in the enclosure, not being allowed to get through the gate; because there may be others; who did not come anywhere near the gate, but moved away in another direction and are to be in the enclosure itself. They did not stick in the gate, but still they did not pass beyond. In other words, they are detained and did not get promotion. Thus, in my opinion, a person who joined in a session and left in the middle has failed to secure promotion, and is detained, exactly like the person, who at the end of the session sits for the examination, but fails to get through. These are, in fact, two ways, and not the only two ways, of failing to get promotion or being detained.

Our attention has been drawn to regulation 6 of the same Chapter. This regulation is applicable only to students taking the High School Examination while regulation 5 is applicable to both the High School and Intermediate examinees. Shri H. N. Diwedi appearing for the petitioner argues that under regulation 6 a private candidate who has left at a stage earlier than the High Section, may still be permitted subject to certain time limits to appear at a High School Examination, if he has not continued his studies at a recognized institution.

That rule does not apply to a case like the present one, and in fact deals with the year in which the candidate may take the High School examination; but that is not the point. Even if a private candidate for the High School examination in a

position comparable to that of the petitioner may be allowed to sit for the High School examination, it does not follow that the petitioner should be allowed to sit for the Intermediate Examination. The very fact that the regulation does not give the concession to the Intermediate examinees, while they gave some concession to the High School examinees, is a point in favour of the Board's interpretation of the regulations. Apart from it the regulation 5 is clear enough.

Neither party has been able to find any reported case in which a similar position arose, but we are really concerned with the meaning and significance of "being detained in a class" and "failing to obtain promotion" to the higher one. For reasons already discussed it is clear, and the Board's interpretation of regulation 5 is, in my opinion, correct.

At this place it may be convenient to refer to the new ground sought to be raised. It is not urged in the petition that the requirements of regulation 7 were not met. That regulation requires that a list of intending private candidates should be prepared and placed before a committee. The committee records recommendations as to whether each of the candidates should be permitted or refused to sit for the examination, and then recommendations should be placed before the Chairman of the Board, who is ex-officio the Director of the Public Instruction. He considers the recommendations, but is not bound by them, and he finally grants or rejects the applications.

The petitioner did not aver in her application that any part of this procedure was omitted. In the return we are told that this procedure was followed. Apropos of it, the return mentions copy of a letter, but actually the copy produced is of something different. Probably, because of this the petitioners counsel has filed a supplementary petition, alleging that the list of candidates was not put before the committee, the committee made no recommendations, and they were not placed before the Director, and as such the entire process was illegal. These are all factual allegations and should be made with a sense of responsibility and invariably supported by an affidavit. Here there is no affidavit, nor was the petitioner prepared to swear an affidavit in support of the allegation that this procedure was not followed. In fact, we are told that these allegations are based upon an inference that a wrong letter has been shown as annex-ure No. 6, This is hardly the proper way of making factual allegations. The supplementary petition is, therefore, ignored.

The application is without substance and is dismissed with costs to the non-applicant and pleader's fee of Rs. 75/- only.

A.H. Khan, J.

This is an application under Article 226 of the Constitution of India, for the issue of a writ, directing the Board of Secondary Education, Madhya Bharat Region to admit the petitioner to the Intermediate Examination commencing sometime in the next month.

The facts leading to this petition, in short are that the petitioner is a daughter of a Government servant, who was posted at Gwalior. She joined Kamla Raja Girls' College, Gwalior on 5-8-57 in the 1st Year Intermediate class, otherwise known as class XI. She had been hardly in the college for a month and a half, when on the transfer of her father to Mandleshwar, she left College on 30-9-57 with a transfer certificate. Unfortunately there was no college at Mandleshwar and she therefore continued her studies privately. When in due course she applied to the Board for being permitted to appear at the Intermediate Examination of 1959, the Board turned down her application on the ground that according to Section 5 of Chapter XIII of the Regulations, she had failed to obtain promotion and was not therefore eligible. It is against this decision of the Board that (the present writ is filed.

The only question to be considered in this case is whether Section 5 operates as a bar to her appearing at the examination and whether the Board has correctly interpreted the section. Section 5 of Chapter 13 of the Regulations runs thus:

" "Private candidates who have failed to obtain promotion" to the highest class of any school or Intermediate College (i.e. Those who have been detained in Class IX or Class XI") shall not be admitted to the next ensuing High School or Intermediate Examination respectively.

Every year in the beginning of the session, the Heads of institutions recognised by the Board shall send to the Secretary of the Board a list of students, who have been detained in Class IX and XI containing the student's name, his age, his father's name, place of residence and guardian's name."

The two sentences which I have underlined (here in " ") are those on which attention need only be focussed in ascertaining the true meaning of the above section, are :

- (1) Private candidates who have failed to obtain promotion;
- (2) that is those who have been detained in Class IX or Class XI.

The expression "failed to obtain promotion" is simple enough. It obviously refers to private candidates who before seeking permission to appear at the examination of the Board were at one time regular students in a College or school. Now as such, when does one "fail to obtain promotion" ? The answer is that when a student, continuing to read at the institution, either fails in the examination or does not take the examination at all, he fails to obtain promotion. But if a student leaves the institution, it would be doing violence to the language to say that he failed to obtain promotion.

I am fortified in the view I have taken by what has been said further in the section itself. The section after saying "failed to obtain promotion" has tried to paraphrase it by saying "that is who have been detained in Class IX or Class XI". There is no doubt about it that the words are explanatory in their nature. Now who are the students that can be said to have been detained in a class? The first

prerequisite of detention is that the student at the time of detention must be continuing as a student at the College

He is one over whom the College authorities have control or who is otherwise subject to their authority. The words detention implies a form of punishment as well. You detain a student who is in the College and that is done by the way of punishment when he "fails to obtain promotion". But where a student has not appeared at an examination and much before the examination has left the institution with a transfer certificate, it would not be proper to say that he has been detained in Class IX or Class XI, because he failed to obtain promotion.

In para 7 of the return filed by Mr. Motilal Dubey on behalf of the Board, it is said that according to Section 5 of the Regulations, private candidates, who left Class IX or Class XI before the commencement of the annual examination and also those who actually appeared and failed are considered as "failed to obtain promotion to the highest class". But Section 5 contains no words such as are now being sought to be imported in it. And in putting the gloss, Mr. Dubey has not at all considered the implication of the word "detained" occurring in the section. A cardinal rule of interpretation of any section or Regulation is that all words used in it must be given due weight. I have no doubt that the body which made these Regulations was a learned body and that it was not for want of words that it could not cast the section properly to signify its real meaning.

The Board in its anxiety to show that its interpretation is right has said that according to Section 5 of the Regulation, the Principal, Kamla Raja Girls' College, Gwalior sent a list of students who had been detained in Class XI and that the name of the petitioner appears at serial No. 47 of the list. In other words, the Board wants to justify its interpretation by what the Principal has done. I am afraid the Principal was not correct in putting down the name of the petitioner in the list of detained students (who had failed to obtain promotion) when the petitioner had, on a transfer certificate, left the College. And two wrongs--wrong interpretation of the Board and wrong inclusion of the name of the petitioner in the list prepared by the Principal, do not make one right.

Let us assume for a moment that the Principal made out a proper list and included the petitioner's name correctly. Then according to the list, the petitioner is a detained student of Class XI, who failed to obtain promotion. But if the petitioner on the basis of her transfer certificate had joined any other College and passed her Class XI examination and then left College, it would create an anomalous position: according to the report of the other college! she would be one who had obtained promotion and not detained in Class XI, whereas according to the report of the Principal Kamla Raja Girls' College, the petitioner was a detained student, who had failed to obtain promotion. The situation thus created is not only confusing but also one which both the Board and the Principal would do well to reconsider.

After considering the matter in all its aspects, I am of the view that the Board

has wrongly interpreted Section 5 referred to above, and, that the petitioner is entitled to appear at the ensuing examination.

For reasons stated above, I direct the Board of Secondary Education, Madhya Bharat Region to let the petitioner appear at the Intermediate" Examination of 1959. Parties to bear their own costs.

(On difference of opinion between Krishnan and Khan JJ., the case came before)

Shiv Dayal, J.

The petition under Article 226 of the Constitution for issuance of mandamus to the respondents to admit the petitioner at the Intermediate Arts Examination of 1959 of the Madhya Bharat Board of Secondary Education, came before me because of the difference of opinion between my learned brothers Khan J. and Krishnan J. After hearing Shri Dwivedi for the petitioner and Shri Mungre for the respondent, I pronounced my order on 3-3-1959, allowing the petition and saying that I would give the reasons for the order afterwards. I now proceed to record the reasons.

Facts are undisputed. On 5-8-1957, the petitioner joined the XI Class (also called the First Year Intermediate Class) on the Arts side of the Kamla Raja Girls" College at Gwalior, where her father, a Government servant, was posted at that time. Soon thereafter, her father was transferred to Mandleshwar and consequently, she had to leave Gwalior with him. On 30-9-1957, she left the college as per "College Leaving or Transfer Certificate" (Annexure A). Item No. 14 of the certificate reads thus :

"14. Reasons for leaving -- Father"s transfer." Para 5 of the petition which too is not disputed, runs thus :

"That there being no college at Mandleshwar, where the father of the petitioner was transferred, the petitioner prosecuted her studies as a private candidate at Mandleshwar for the Intermediate Arts Examination of 1959."

The petitioner then submitted an application form for being admitted as a private candidate to the Intermediate Arts Examination of the Board to be held in March, 1959. Her form was rejected on the ground that she was disqualified under Rule 5 of the Regulations referred to hereinafter, as she had been "detained" in the XI Class last year.

The Madhya Bharat Board of Secondary Education is constituted under the Madhya Bharat Secondary Education Act (No. 51 of 1950). The Board is an examining body and hold"j High School and Intermediate Examinations. Regulations have been made u/s 16 of the Act, inter alia, providing for "the conditions under which the candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates".

The material provisions are these:

(i) "Before entering upon the course of study prescribed for the Intermediate Examination every candidate shall require either (a) to have passed the Board's High School Examination or (b) to have passed an examination which by Regulations is declared to be equivalent to the High School Examination of the Board" (Chapter XVII Clause (i)).

(ii) "No candidate shall be admitted to the Intermediate Examination unless two-academical years" shall have elapsed since the date of his passing the High School or an equivalent examination." (Chapter XVII Clause (3)).

(iii). "Private candidates shall be eligible to appear at the Board's examinations on the conditions laid down in these Regulations". (Chapter XIII Clause (1)).

(iv) "Private candidate means "a candidate for an examination conducted by the Board who has not, during the sessions preceding the examination, been studying at a recognized institution" (Chapter I Clause 1 (8)).

(v) "Private candidates who have failed to obtain promotion to the highest class of any school or intermediate college (i.e. those who have been detained in Class IX or Class XI) shall not be admitted to the next ensuing High School or Intermediate Examination respectively.

"Every year in the beginning of the session the heads of institutions recognized by the Board shall send to the Secretary of the Board a list of students who have been detained in Class IX or Class XI containing the student's name, his age, his father's name, place of residence and guardian's name." (Chapter XIII Clause (5)).

The last mentioned Clause is followed by Clause 8 which shall be referred to later, but which, for the sake of convenience, may also be quoted here;

(vi) "No student who has left school at a stage earlier than the High Section (I am told that it means the High School Section), shall be permitted to appear at the High School Examination as a private candidate in a year earlier than that in which he would have appeared if he would have continued his studies at a recognized institution upto the High School Examination. This, would not apply to a candidate who has not attended a school for at least five years preceding the examination at which he wants to appear."

In this case, there is no dispute that the petitioner satisfies the conditions laid down in the first four provisions which I have numbered above as (i), (ii), (iii) and (iv). It is the case for the petitioner that since she had left the college in September 1957 and she was never detained in Class XI, she did not come within the mischief of the fifth Clause of Chapter XIII, and, that being so, it was the duty of the Board to permit her to appear at the Intermediate Art Examination of 1959. Her averment in the petition that during the period between 5-8-1957 and 30-9-1957, no promotion examination was held, has been admitted by the respondent. The respondent's case is that because she left the college in the middle of the session "before the commencement of the

examination" (meaning thereby the first year examination held in 1958) and did not obtain a promotion to the XII Class, she must be treated to have been "detained" in Class XI. Thus, the sole question is, whether the debarring provision is or is not attracted to the petitioner's case.

The expression "who have failed to obtain promotion to the highest class of the . . . Intermediate College" obviously implies an attempt to obtain promotion. A student who left the college and admittedly, decided as back as in September, 1957--almost in the beginning of the session that she would appear as a private candidate at the Intermediate Examination of 1959, and who did not continue her studies at any college upto a time when there was an occasion for her to appear at the XI Class Examination, cannot be said to have "failed". The question of success or failure arises only in the case of a student who either actually appears at an examination or at least reaches a stage when he can appear at the examination. After having obtained the college leaving certificate in September, 1957, the petitioner could not appear at the XI Class Examination in March or April, 1958, and such a student could in no case, obtain promotion to the XII Class. Therefore, it cannot legitimately be asked of such a student whether she succeeded in obtaining promotion or she failed in doing so.

It appears to me that the framers of the Regulations were themselves not satisfied that the expression "having failed to obtain promotion to the highest class" was appropriate or precise and, therefore, they sought to explain it so as to clarify what their real intention was and this they did by saying, "i.e. "those who have been detained in . . . Class XI." This clearly means that the first cited expression "failed to obtain promotion" has to be read in that limited meaning which is known as "detaining a student in a class". The learned Government Advocate, appearing for the Board, contends that the expression given within the brackets is intended to be illustrative but not exhaustive of what precedes. This cannot, in my judgment, be accepted because by using the expression "that is" the meaning of the former expression has been made more precise and comprehensible. In Fowler's Modern English Usage, it is stated as follows :

"i.e. means that is to say, and introduces another way (more comprehensible to the hearer, driving home the speaker's point better or otherwise preferable) of putting what has been already said; it does not introduce an example, and when substituted for e.g. in that function....is a blunder."

The learned Government Advocate fairly and frankly concedes that he finds himself in difficulty if the expression, used in brackets after the words "i.e. is not interpreted to be illustrative but is construed to be exhaustive.

Now, the crux of the matter is, whether it can be said, as the Board has said, that the petitioner was "detained" in XI Class. The term "detain" is not a word of art. In the absence of a different definition in the Regulations, that word is bound to be read in its ordinary meaning :

(i) Oxford Shorter Dictionary--To hold off, to keep from proceeding, to keep

waiting, to stop.

(ii) Webster--To keep back, to withhold, to restrain, to stay or stop, to hold back (synonymous with arrest, check).

(iii) 2 Burrows' Words and Phrases" -- Withholding adversely.

(iv) Stroud -- Withholding adversely.

(v) 18 Corpus Juris 978 -- To arrest, to check, to hinder, to restrain from proceeding, to stay, to stop.

Thus in the popular meaning, the word "detain" connotes an action on the part of someone else to stop or to restrain from proceeding or to check or arrest another person. In the present context, the word "detain" would apply to a case where a student who seeks to be promoted, is not promoted to the higher class but is detained in the same class either because he does not secure the requisite marks or because he is held back for adopting foul means at the examination, or for some such reason. But the act of detaining him must be of an authority. A candidate can be told that he is not promoted to the higher class because he has not secured such percentage of marks as entitled him to the promotion; likewise, he can be told that he is not promoted to the higher class, although he has secured a high percentage of marks, because he adopted foul means during the examination.

But a student cannot be told: "since you left the class in September, you are detained in that class". The words "in the class" after the words "have been detained" are not without significance. If I may say so, it is a contradiction in terms to tell a person who had already "left the class", that he has been subsequently "detained in the class". It is implicit in the word "detain" that the person detained wanted to proceed further but was not allowed to do so. If a person voluntarily did not proceed, he would be said to have "left", "discontinued," "abandoned" or "abstained", (or any other equivalent in the active voice) but it could not be said that he "had been detained". The words "have been" are indicative of the passive voice and leave no manner of doubt that the act of "detaining" must be of another person -- a person in authority to detain students in that class.

The contention of the learned Government Advocate is that in the case of a student who once joins the XI Class of a college, the student shall in all circumstances be deemed to be detained unless he is duly promoted to the XII Class. I find myself unable to accept this contention for more reasons than one. If that had been the intention of the framers of the Regulations, certainly they would not have employed the language that they did. The expression "have been detained" is wholly inappropriate for conveying such a meaning. It is beyond doubt that the framers of the Regulations must have used this expression in the popular sense alone because if they intended to use it in any technical or peculiar sense, they would have either provided a separate definition (or explanation) for

it or would have used another expression as they have done elsewhere in the Regulations.

The framers of the Regulations, who had intended them to be read and followed primarily by boys and girls of the High School and Intermediate standard must be deemed to have used the word "detain" as it is done in common parlance and not with a meaning which would require some art and learning to support and justify it. To hold otherwise is neither just nor reasonable. It must be presumed as a rule that exact and correct words are used in a statute. Here it is all the more so when the anxiety of the framers of the Regulations to be more precise and specific is quite manifest in adding the expression within brackets.

In *New Plymouth Borough Council v. Taranaki Electric Power Board* (1933) AC 680 (at p. 682) and also in *Spillers Ltd. (1931) 2 KB 21*, it is held that words in a statute must be taken to be used correctly and exactly, not loosely and inexactly.

The observations of His Lordship Shri Justice S. R. Das (as he then was) in the case of *Jugalkishore Saraf Vs. Raw Cotton Co. Ltd.*, may be recalled here :

"The cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation."

In *The New Piecegoods Bazar Co. Ltd., Bombay Vs. The Commissioner of Income Tax, Bombay*, it has been observed by Mahajan J. that it is the primary duty of a Court to give effect to the intention of the Legislature as expressed in the words used by it and no outside consideration can be called in aid to find that intention,

On the basis of a number of authorities including the case of *Camden (Marquis) v. Inland Revenue Commissioner* (1914) 1 KB 641 CA (647), it is stated in 31 Halsbury (Hailsham) 480 :

"Words are primarily to be construed in their popular sense, and as they would have been understood the day after the statute was passed, it being irrelevant to consider what a particular branch or the public may understand to be the meaning, unless such a construction would lead to manifest and gross absurdity."

I am quite satisfied and find that in the case in hand, the literal interpretation entails no absurdity whatsoever. I shall further dwell upon this point in later part of this judgment. To me, the expression "have been detained" is neither vague, nor admits of a double meaning. The import of the words "have been" removes every possible doubt that the expression "have been detained" is used to denote only one meaning which excludes the construction put by the Government Advocate.

Thus, on the literal interpretation, I have reached the conclusion "that the word "detained" has been used only to cover those cases where a student is detained in a particular class by the authorities who exercise control over him for the well known reasons of either not securing the percentage of marks requisite for promotion or for adopting tin-fair means at the examination. However, I shall not content myself by adhering to the popular meaning alone. Even on a deeper probe into the matter, I come to the conclusion that the only object of providing the disqualifying clause was to disallow only such candidates as carried with them the stigma of having been detained in the IX Class or the XI Class.

In this connection, it is patent in the scheme of the Regulations that the Board is not concerned whether a candidate prepares himself as a student of a recognized institution or as a private candidate. The only qualifying examination which he must have passed to be eligible for appearing at the Intermediate Arts Examination is the High School Examination. The Board is also not concerned whether a student has or has not passed the XI Class examination. But since it would be unwholesome, and repulsive to the mind that a student who failed or was detained in the XI Class Examination of 1958 be permitted to appear at the XII Class or Intermediate Examination of 1959, this Clause was provided. That is the object and purpose and the only purpose--for the disqualifying Clause (5).

It must be remembered that the said Clause (5) nowhere says that it is meant only for those candidates who have been regular students of an Intermediate College. It equally covers the case of a student who has been prosecuting his studies privately and seeks to appear at the XI Class Examination of an Intermediate College so as to enable him to be, on being duly promoted, a regular student of the XII Class. Such a candidate, if he does not obtain the requisite number of marks or is for any other reason "detained" and not declared promoted, his name must also be shown in the list of students which the Principal of that college shall send to the Secretary of the Board in the beginning of the next session under the 2nd paragraph of Clause (5) under discussion. I am therefore clear in my mind that Clause (5) refers to the annual results of a recognised institution.

On ultimate analysis of the first five rules which I have quoted above in extenso from the various chapters of the Regulations, the position which emerges is this:

"(a) A candidate who has not during the session preceding the examination been studying at a recognized institution, is eligible to appear at the Intermediate Examination provided he has passed the High School Examination and two academical years have elapsed since the date of his passing the last mentioned examination; fb) The Board is not concerned whether the candidate has studied privately or has at any time been the regular student of a college prior to the next immediately preceding session of the year in which the examination is held; (c) But, however, if the candidate carries with him the stigma of having failed or, to be more precise, having been detained in the XI Class in the end of the session immediately preceding the year of the examination, (say 1958), he must

not be allowed to appear at the next ensuing examination (of 1959).

To me this seems to be the whole intent and purpose of the fifth Clause. And even in the case of such a student, it is not necessary that he must continue his studies in a college and obtain promotion in any subsequent session; he may, if he so chooses, prosecute his studies privately for a further period of two years and appear at any of the Inter Arts Examinations after the next ensuing examination. (He will be eligible for the 1960 examination). The bar thus imposed is but reasonable, because, if a student failed or was otherwise detained in the Class XI Class Examination of 1958, it will be absurd to allow him to appear at the XII Class Examination of 1959 as a private candidate. In my opinion, the intention of the said Clause 5 does not go any further beyond this."

If the object of the framers was the one suggested by the learned Government Advocate, Clause 5 would have been worded in a plain language providing that a student who had joined the XI Class of a recognized institution, shall not be eligible to appear, at the next ensuing Intermediate Examination unless he was "duly promoted" to the XII Class. The words that I have put within inverted commas have actually been used in the Regulations themselves, (Chapter XVII Clause 4). Not employing the same expression in the relevant Clause 5 is indicative of a different and a limited intention. It must be noted in this context that the Regulations do not require any candidate for the Inter Arts Examination to have first been duly promoted to the XII Class.

This construction of the clause in question also finds support from the words "next ensuing examination". Take the case of a student who left XI Class in the middle of a session, say in September, 1957. If he so leaving the college tantamounts to "have been detained" and if the expression "have been detained" is not confined in its application to the annual result of that class, the bar came into play only for the next ensuing Intermediate Examination which was held in 1958 and so there is no bar to his Intermediate Examination of 1959.

The above interpretation is further illuminated when the next Clause (6) of Chapter XIII (quoted hereinbefore) is looked at. According to that clause, if a student left a recognized school when he was in the VIII Class, say in the academical session 1956-57, he is eligible to appear at the High School Examination of 1959. This clause therefore takes it for granted and stands on that basis, that if he had continued his studies at a recognized institution upto the High School Examination, he could have passed the VIII Class in 1957 and the IX Class in 1958.

This illustration makes it very clear that the framers of the Regulations did not equate "leaving a certain class" of a school with "having failed (that is, having been detained) in that class", for, if that were so, the student under this illustration would not be eligible to appear in 1959 even though he has thereafter been all along prosecuting his studies privately, but that would be inconsistent with what is permitted in Clause 6. In that case, Clause 6 would have been

worded so as to allow such a) student to appear at the High School Examination as a private candidate only "after one year" "of that year in which he would have appeared if he had continued his studies at the recognized institution upto the High School Examination" (that is, in 1960).

There remains to be examined the last argument of the learned Government Advocate, namely, that if the interpretation put by him were not accepted, it would lead to the consequence that a regular student of the XI Class of a college, finding himself not fit to be promoted at the XI Class Examination (of 1958), could quietly obtain a leaving certificate from the college just a day or two before the XI Class Examination commenced, and then appear privately at the Intermediate Examination of 1959. He could thus gain an advantage by leaving the institution and by avoiding to face the annual examination, as thereby he would keep himself eligible for the Board's Examination next year. And it was visible to me at the hearing that this argument found reflection throughout the learned Government Advocate's address.

I find myself unable to accept such an argument. In the first place, such extreme cases do not render any valuable assistance because, in answer to it, another extreme case can be imagined where a student joins the XI Class and the very next day leaves it because of some calamity in the family which renders him unable to prosecute the studies in the college. It is, indeed unnecessary to introduce sentimentalism and thereby create a prejudice in the mind. Then again, one should not grudge if a student can get an advantage because the same is not denied to him under the Regulations. And what, I ask myself, is the absurdity or unreasonableness in this? If the Regulations allow it, a student is free to, leave the institution, whenever further continuing there does not suit him, just as he might not have joined it at all.

The matter would have been very different if the passing of the XI Class Examination were a necessary qualification for appearing at the Examination. Above all, to my mind this argument advanced on behalf of the Board is in utter disregard of the Fact that after all such a student who does not face the XI Class Examination, only deprives himself of the benefits of instruction at a recognized institution in the XII Class. He cannot be admitted to the XII Class in any recognized institution so long as he has not been "duly promoted to that class by a recognized institution. The advantages which are available to the student of a recognized institution are well known. There he gets coaching at the hands of qualified teachers and he avails of association with other regular students, besides other amenities and a number of extra-curricular activities.

40-41. Towards the close of the hearing, it was faintly urged by the learned Government Advocate that even if his arguments were found unacceptable, this could not be a case for the issuance of a writ because the matter was discretionary with the Board. Shri Dwivedi raised an objection that no such submission had been made before the Division Bench and that in his reply too the Government Advocate did not raise that point before me, nor was it taken in

the return. Shri Dwivedi's objection relating to practice is not unsubstantial though technical. But that apart, I am fully satisfied that this is a case where this Court must issue a mandamus with appropriate orders.

"A writ of mandamus is a high prerogative writ of a most extensive remedial nature, and is in form a command issuing from the High Court of Justice, directing any person corporation requiring him or them to do some particular thing, therein specified, which pertains to his or their office and is in the nature of a public duty. Its purpose is to supply defects of justice; and accordingly it will issue to the end that justice may be done, in all cases where there is a specific right and no specific legal remedy for enforcing such a right.". (See II Halsbury (Simonds) 84).

In short, it commands the person to whom it is addressed, to perform some public legal duty which he has refused to perform.

In support of his argument that by issuing a writ in this case, this Court would be interfering with a discretionary matter of the Board the learned Government Advocate relied upon the case of *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, On a very careful consideration, I do not see how that decision of their Lordships applies to this case. In that case it is laid down that questions whether there was leakage of a question paper and whether the examination in that particular subject should be cancelled and another examination in that subject be held, were matters in the discretion of the Syndicate and the High Court could not as a Court of Appeal, substitute its own judgment for that of the University Authorities who, confronted with an urgent situation acted only as reasonable and responsible men.

The above pronouncement of their Lordships is the authority for the proposition that where the law has entrusted a certain matter which is administrative in nature and lies within the discretion of a public body, having regard to the exigencies of the situation, the High Court cannot substitute its own wisdom in such a discretionary matter. Here, the Board which acts within the four corners of the statute which created it and the Regulations made thereunder, has not been given any discretion to examine or refuse to examine any candidate. If a candidate satisfies the requirements of the Regulations, he must be examined; if not, he cannot be examined.

Where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the Court will require it to be exercised. *F.G. Julius v. Lord Bishop of Oxford* (1879) 5 AC 214. Also see *Rex v. Board of Education* (1910) 2 KB 165.

It was held in *Hemendra Chandra Das v. Gauhati University* AIR 1954 Assam 65:

"A writ of mandamus would lie against public bodies compelling them to carry

out their duties. The University is a public body. Ordinarily, a Court would be most reluctant to interfere with the internal discipline of the University and its autonomous working under the Statute. An august body of such importance is entitled to all the reasonable latitude which its position deserves. But the University is a creature of the statute and must obey the rules and regulations by which it professes to be bound. If it acts in violation of those rules and thereby adversely affects the rights of others, its conduct is open to question."

In the case of *Manoranjan Ghose Vs. The State of Bihar and Others*, where the petitioner was not permitted to appear at an examination because it was found that he did not fulfil a certain condition and where the High Court found that the order refusing to give permission to the petitioner to appear at the examination was ultra vires as he had fulfilled the requisite conditions and was therefore entitled to appear at the examination, a writ in the nature of mandamus was issued.

In *Tapendra Nath Roy Vs. University of Calcutta and Others*, mandamus was issued when the University refused to declare a student to have passed an examination when he fulfilled every condition for such a declaration because of a wrong view which it took of its Regulations. The specific act was then considered ministerial. In that case the only ground for withholding declaration was a wrong interpretation of the word "subject" in the Regulations.

When a public officer or a body is required under the law to do a certain act upon a given state of facts in a prescribed manner and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed, it is a ministerial act. Merely because the officer has to read and to construe a statute in order to ascertain the precise duty which he is required to perform, it does not cease to be a ministerial act. In the present case, as soon as the interpretation of Clause 5 of Chapter XIII in general and the ex-expression "have been detained" in particular is corrected, the specific act of admitting the petitioner to the Intermediate Examination of 1959 is only consequential and ministerial. In fact it becomes a public duty of the Board to admit the petitioner at the ensuing examination of 1959,

In summarizing the principles relating to mandamus, Chagla C. J. observed in the case of *State of Bombay Vs. Laxmidas Ranchhoddas and Another*,

"Mandamus will issue when the Government or its officers either overstep the limits of the power conferred by the statute or fail to comply with the conditions imposed by the statute for the exercise of the power,"

Even when it is matter of power, that power may be coupled with duty and here I repeat with respect, the words of Earl Cairns L. C. in the famous case of (1879) 5 AC 214 (where the expression "it shall be lawful" was under consideration):

"There may be something in the nature of the "thing" empowered to be done, something in the "object" for which it is to be done, something in the

"conditions" under which it is done, something in the "title" of the person or persons for whose benefit the power is to be exercised, which may couple the power with the duty and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so".

Applying these principles and on the findings that I have reached, namely, that there is no bar to the petitioner appearing at the Intermediate Arts Examination of 1959 and the Board is found to be not performing its public duty in refusing to examine her, I must arrive at the following conclusions.

- (i) The petitioner has a clear and specific right to the relief demanded by her,
- (ii) There is a duty imposed by law on the respondent.
- (iii) Such duty is of an imperative character.
- (iv) The petitioner has no other equally adequate and efficacious remedy.

Mandamus must, therefore, issue directing the respondent Board to act according to law, treating the petitioner as not disqualified from appearing at the Intermediate Arts Examination of 1959. No order as to costs.