

(1990) 07 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 1400 of 1990

Sudhakar D. Janai

APPELLANT

Vs

Education Officer, Zilla Parishad and Another

RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:

Secondary School Code — Rule 37.4

Citation : (1991) 1 BomCR 457 : (1992) 94 BOMLR 727 : (1992) MhLj 1400

Hon'ble Judges : V.A. Mohta, J;H.D. Patel, J

Bench : Division Bench

Advocate : S.G. Kukday and A.S. Kukday, for the Appellant; M.P. Badar, Government Pleader for respondent No. 1 and M.L. Somalwar and W.G. Somalwar, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—Model Rules of Promotion given in Appendix Seven, vide Rule 37.4 of the Secondary Schools Code fall for consideration in this petition filed on behalf of an VIIIth standard student Ram Sudhakar Janai, who has not been promoted to the IXth standard by a committee constituted under Rule 4 of the Model Rules. According to the petitioner who is the father of the student, the decision of the Committee and so also its upholding by the Education Officer is illegal and hence his son should be directed to be promoted.

2. We do not find any substance in the grievance made out, for the reasons that follow. The Model Rules read as under :

"1. (i) Promotion of a student from one standard to another shall be made at the end of school year on the basis of his/her performance at the two semester examination, written and practical (wherever prescribed), conducted by the schools, and his/her semester performance consisting of oral examinations (wherever prescribed), unit tests, home work, practicals etc.

The semester examination at the end of the first semester shall be based on the

syllabus covered during the first semester and the examination at the end of the second semester shall be based on the syllabus covered during the second semester.

(ii) For purpose of promotion and rank the marks secured by a student in each head of passing at the two semester examinations and the marks obtained in each head of passing in the semester performance shall be added together and the average thereof shall be calculated. Students securing not less than 35 percent of the marks in each individual head of passing shall be eligible for promotion to a higher standard after availing, if necessary, of the benefit of an automatic condonation of 15 marks in one or more heads of passing but not more than 10 percent of marks in each of such subjects.

(iii) The average of marks in each head of passing mentioned in the preceding rule shall be worked out by dividing by three, the total of marks of (a) the first semester examination (written and practical) at the end of the first semester, (b) the second semester examination (written and practical) at the end of the second semester and (c) the semester performance consisting of oral examinations (wherever prescribed), unit tests, home work, practicals etc. The categories (a) (b) and (c) mentioned above shall carry equal marks. The allotment of marks for each semester performance shall also be equal.

2. The marks obtained by a student at the first semester examination and his/her first semester performance in all heads of passing shall be communicated to his/her parents.

3. The benefit of condonation of marks shall be given only at the end of the year while deciding the student's promotion from one standard to another.

4. If a student for reasons beyond his/her control falls to appear for any examination and secures less than the minimum p.c. of the marks prescribed for passing, a committee consisting of the Head Master, the class Teacher and the subject Teacher shall de-clue his/her promotion on the basis of his/her performance in the remaining examinations and his/her semester performance."

3. Factual background is this : The student Ram janai prosecuted his studies in VIIIth standard in Somalwar High Court, Ramdaspath, Nagpur, which is one of the well known schools of this area. He secured 43 marks out of 125 in the first Internal Unit Test, 35 marks out of 125 in the Second; 35 marks out of 125 in the third; 46 marks out of 125 in the Fourth and 191 marks out of 700 in the First Semester Examination. He failed in all these five examinations and secured less than passing marks in almost every subject. In the Subject of Mathematics he had obtained 16 marks out of 150 in the First Semester Examination. In the Second Semester Examination he secured 184 out of 700 marks. In the Second Semester Examination, he did not appear for the paper of Mathematics, but secured 70 out of 150 marks in the semester performance. Since he was absent in one of the examination in the subject of Mathematics and had secured less than minimum prescribed percentage of marks for passing, a Committee

consisting of the Head Master of the School, Class teacher and the subject teacher, as contemplated under Rule 4 of the Model Rules was constituted to decide his promotion. On the basis of performance of the student in the remaining examinations, unanimous decision of not promoting him was taken by that Committee. Aggrieved by that decision Education Officer was moved but without any success.

4. Now the submission of the petitioner is that the marks obtained by the student of Mathematics ought to have been calculated as per Rule 1 and if so calculated the student gets 58 marks out of 150 which are more than 35 per cent. This is how the petitioner calculates :

The student secured in Mathematics 16 marks out of 150 in the First Semester Examination and 70 marks out of 150 in the Semester performance. These 86 marks should be divided by two. So divided, the real marks obtained comes to 43 out of 150 and to this 15 marks by way of benefit of automatic condonation should be added and this total comes to 58.

5. It is unnecessary to go into the debate as to whether proper method of calculation of the average marks would be on the basis of division by 2 as contended by the petitioner or division by 3 as asserted by the respondent, because, in our view, provisions of Rule 1 cannot be read in Rule 4. Rule 4, as we see it, is a self contained Code in the matter of decision to promote a student who has failed to appear in the examination and has not secured minimum percentage of marks prescribed for passing in the subject concerned. The plain object of Rule 4 is to avoid injustice to a student who for genuine reasons beyond his control could not appear for "any examination". It is not disputed before us that the words "any examination" are restricted only to any one examination and the said Rule will come into play even when there is absence in more than one examinations. Thus situation can arise where a student was unable to appear in all the examinations in a particular subject. It is very plain that in such cases average cannot be worked out. Moreover, had the rule contemplated merely making of calculations as per Rule 1, there was no point in having a high power 3 men Committee for undertaking that crucial exercise. The composition of the Committee itself indicates that decision has to be taken on the basis of over all performance of the student "in the remaining examination". The words "remaining examinations" cannot be read as confined to examinations in a particular subject. They clearly mean remaining examinations in all the subjects. In the instant case over-all performance has been considered and a decision taken on that basis. We have already noted the over-all performance of the student which is plainly unsatisfactory. No fault can, therefore, be found with the decision.

6. To conclude, the petition is dismissed and Rule discharged. No costs.