

(2020) 10 DEL CK 0163

In the Delhi High Court

Case No : Civil Writ Petition No. 1427 Of 2020, Civil Miscellaneous No. 4963,
19353 Of 2020

Yash Yadav

APPELLANT

Vs

Central Board Of Secondary Education And Anr

RESPONDENT

Date of Decision : 15-10-2020

Acts Referred:

Citation : (2020) 10 DEL CK 0163

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Apurb Lal, Atul Kumar, Ankit Singh

Final Decision : Dismissed

Judgement

Jayant Nath, J

This hearing is conducted through Video-Conferencing.

1. This writ petition is filed by the petitioner seeking to set aside the letter dated 06.01.2020 by which the respondents were not allowing the petitioner to appear in the Xth Board Examination held in February 2020.

2. The petition is short and omits material facts. Relevant portion of the petition reads as follows:-

"5. That the Petitioner is a student of class Xth studying in The Sovereign School, Phase-III, Pocket-17, Sector-24, Rohini, Delhi-110085.

6. That the Petitioner is good in study but unfortunately in the year 2019 from the month of April, 2019, the Petitioner has been suffering from health problem and because of the said reasons, he was not regular in the school as it would be evident from the medical documents.

7. That in the month of November, 2019, the Petitioner while seeking exemption from shortage attendance by condoning the shortage attendance submitted

entire medical documents related to the treatment of the Petitioner. Copy of the medical documents are annexed as Annexure-P2(Colly)

8. That the Petitioner was informed vide impugned letter dated 06/01/2020 that on account of shortage of attendance, the Petitioner will not be allowed to appear in the examination of class Xth as per CBSE Rules.

9. That as per the CBSE Rules, the Respondent No.2 is under obligation to refer the request for exemption from shortage of attendance along with supporting documents for consideration of the Respondent No. 1 for condoning the same.

10. That the Petitioner was orally informed that the Respondent No.1 has also turned down the request for exemption from shortage of attendance."

3. Respondent No. 1 CBSE has filed its counter-affidavit. In the counter-affidavit, it has been pointed that the minimum prescribed limit for attendance is 75%. However, the petitioner has only an attendance of 80 out of 186 as on 31.12.2019 and thus, has 43% attendance. Hence, it is stated that the attendance of the petitioner was short and he could not attend the examination conducted by respondent No. 1 in February/March 2020. It is further stated that under the bye-laws of respondent No. 1, a candidate whose attendance is less than 60% is not considered for condonation of shortage of attendance unless there are special circumstances as detailed in the examination bye-laws on account of serious illnesses e.g. cancer, AIDS, TB, etc. It is further stated that it is only on 03.02.2020 that the petitioner had for the first time submitted certain medical records with respondent No. 2 showing that he was not well on the dates when he had not attended the classes. The said record was filed with respondent No. 2 just one day prior to filing of the present writ petition. The medical documents were examined by respondent No. 1 and it was noticed that the petitioner was hospitalized only for the period from 16.10.2019 to 21.10.2019 at Saroj Super Specialty Hospital for treatment of "Enteric Fever with AFI with Dehydration". Rest of the medical documents/certificates are stated to be vague. Hence, respondent No. 1 exercised discretion under Clause 14 of the Examination Bye-laws and held that the petitioner is not eligible to appear for the Class X Exam.

4. On 12.02.2020, this court passed an interim order in favour of the petitioner permitting the petitioner to sit in the Class X examination. Relevant portion of the said order dated 12.02.2020 reads as follows:-

"5. The sum and substance of Clause 13(i) and Clause 14(i) and (ii) of the Examination Bye-Laws is that, in the normal course, for a student to sit in the Class-X examination, he/she has to attend, in the very least, 75 percent of the classes.

5.1 Furthermore, in case of shortage in attendance, the Chairman, CBSE, is vested with the power to condone the same to the extent of 15 percent.

5.2 However, in "exceptional circumstances", the Chairman, CBSE, can condone

the shortage in attendance even where it falls below 60 percent.

5.3 The exceptional circumstances which are referred to in Clause 14(ii) of the Examination Bye-Laws concern disease such as Cancer, AIDS, TB or similar serious diseases which require long period of hospitalization.

6. As to what is the scope of Clause 14(ii) of the Examination Bye-Laws is no longer res integra as a coordinate bench of this Court in Pranshu Shakti Tiwary vs. Central Board of Secondary Education, 2019 SCC OnLine Del 8261 after considering judgments of various High Courts, has held that an "expansive interpretation" has to be given to the expression "exceptional circumstances".

6.1 The Court has concluded, based on the fact, that the careers of students are involved that such interpretation should be accorded to the said bye-law which is purposive in nature and not literal.

7. In the instant case, the petitioner has placed on record, various medical documents which are appended on pages 15 to 39 of the paper book.

8. Although, Mr. Kumar has not filed a counter-affidavit, he has placed before me, letters addressed by the School to the CBSE and also the CBSE's format letters vis-a-vis the shortage of attendance of the petitioner.

8. 1 The letters of the CBSE addressed to the School are dated 23.01.2020 and 29.01.2020. Insofar as the letters addressed by the School to the CBSE are concerned, they are dated 7.01.2020 and 25.01.2020.

8. 2 In the first letter i.e. letter dated 07.01.2020, the School has taken the stand that the petitioner's request for condonation of shortage in attendance cannot be granted "even on medical ground".

8. 3 However, in the second letter i.e. letter dated 25.01.2020, the School has taken the stand that if the CBSE were to allow the student to take the Class-X examination on "any ground", then, the School would have no objection.

8. 4 The CBSE, via the communications dated 23.01.2020 and 29.01.2020, which are format communications, has simply taken the decision that the shortage in attendance cannot be condoned.

9. Since no counter-affidavit has been filed on behalf of the CBSE, for the moment, the assertions made in the petition will have to be accepted for the simple reason that they are supported by an affidavit.

10. In these circumstances, the School is directed to issue an admit card to the petitioner to enable him to take the Class-X examination.

10. 1 The CBSE will, likewise, allow the petitioner to sit in the Class-X examination.

10. 2 Since Mr. Kumar says that he would like to file a counter-affidavit in the matter, one more opportunity in that behalf is granted.

10. 3 In the meanwhile, liberty is also given to the petitioner to place on record additional documents, if he so desires, concerning his medical condition during the relevant period. The needful will be done within two (2) weeks from today.

10. 4 The final decision in the petition will be taken once the respondents file their counter-affidavit(s) in the matter. Counter-affidavit(s) will be filed within four (4) weeks from today."

5. The petitioner has thereafter given the Class X exam. However, the result of the exam has not been announced.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner has very strongly urged that the interim order of this court dated 12.02.2020 did not give a right to respondent No.1 CBSE to withhold the result of the petitioner for Class X Examination. It has been strongly urged that the said result be declared as the petitioner has to take part in selection process for the next year. He has vehemently relied upon the documents attached to the writ petition being Annexure P-2 to plead that in terms of the Bye-laws of CBSE, the petitioner is entitled to exemption on account of his illness and is entitled for condonation of the period the petitioner could not attend the school and that the result of the petitioner should be declared. He also relies upon the judgment of a Coordinate Bench of this court in the case of Pranshu Shakti Tiwary through Mother Smt. Kanchan Tiwary vs. Central Board of Secondary Education & Ors., 2019 SCC OnLine Del. 8261 to support his case.

8. Learned counsel for respondent No. 1 has however pointed out that the petitioner had only 40% attendance. Up to 15% shortage of attendance can be condoned under the bye-laws. However, where attendance is below 60%, it is only in cases of hospitalization or on account of severe medical problems that condonation is done. It is pointed that the Chairman of respondent No. 1 has rejected the case of the petitioner as the medical conditions stated by the petitioner do not warrant such condonation.

9. The relevant examination bye-laws of respondent No. 1 which are applicable to this case have been culled out in the order of this court dated 12. 02.2020 which read as follows:-

"13. A Regular Course of Study

13.1(i) The expression "a regular course of study referred to in these Bye-Laws means at least 75% of attendance in the Classes held; counted from the day of commencing teaching of Classes IX/X/XI/XII as the may be, upto the 1st of the month preceding the month in which the examination of the School/Board commences. Candidates taking up a subject(s) involving practicals shall also be required to have put in at least 75% of the total attendance for practical work in the subject in the laboratory. Heads of institutions shall not allow a candidate who has offered subject(s) involving practicals to take the practical

examination(s) unless the candidate fulfils the attendance requirements as given in this Rule.

(i)(a) The expression "a regular course of study" referred to in these Bye Laws means at least 60% of attendance in respect of students participating in Sports at National level organized by recognized Federations/CBSE/SGFI, the Classes held counted from the day of commencing teaching Classes IX/X/XI/XII, as the case may be, upto the 1st of the month preceding the month in which the examination of the School Board commences. Candidates taking up a subject(s) involving practicals shall be required to have put in at least 60% of the total attendance for practical work in the subject in the laboratory. Heads of institutions shall not allow a candidate who has offered subject(s) involving practicals to take the practical examination (s) unless the candidate fulfils the attendance requirements as given in this Rule.

14. Rules for Condonation of Shortage of Attendances

(i) If a candidate's attendance falls short of the prescribed percentage, in case of students appearing for the Secondary and Senior School Certificate Examinations conducted by the Board, the Head of the School may submit his name to the Board provisionally. If the candidate is still short of the required percentage of attendance within three weeks of the commencement of examination, the Head of the Institution shall report the case to the Regional Officer concerned immediately. If in the opinion of the Head of the Institution, the candidate deserves special consideration, he may submit his recommendation to the Regional Officer concerned not later than three weeks before the commencement of the examination for condonation of shortage in attendances by the Chairman, CBSE who may issue orders as he may deem proper. The Head of the school in his letter requesting for condonation of shortage in attendance, should give the maximum possible attendance by a student counted from the day of commencing teaching of Classes X/XII (beginning of the session) upto the 1st of the month preceding the month in which the examination of the Board commences, attendance by the candidate in question during the aforesaid period and the percentage of attendance by such a candidate during the aforesaid period.

(ii) Shortage up to 15% only may be condoned by the Chairman in respect of those students appearing for the Secondary and Senior School Certificate Examinations conducted by the Board. Cases of candidates with attendance below 60% in class

X or class XII, appearing for the Board's examinations, as the case may be shall be considered for condonation of shortage of attendance by the Chairman only in exceptional circumstances created on medical grounds, such as candidate suffering from serious diseases like cancer, AIDS, TB or similar serious diseases requiring long period hospitalization. ..."

10. What follows from the above rule is that shortage of 15% only of attendance can be condoned by the Chairman in respect of students appearing for secondary and senior school certificate examination. The cases of candidates whose attendance is below 60% can be considered for condonation of shortage of attendance only in exceptional circumstances created on medical ground such as a candidate is suffering from a serious disease like cancer, AIDS, TB and other similar serious diseases requiring a long period of hospitalization.

11. Respondent No. 1 in the counter-affidavit spells out the medical condition of the petitioner and concludes that the petitioner is not entitled to condonation of shortage of attendance. Para 13 of the counter-affidavit reads as follows:-

"13. I say that the medical record (Annexure P -2 [colly] to the writ petition) also did not support the case of the petitioner as the ailments referred to therein, even as per the said documents, did not require long period of hospitalization. In fact, as per the said medical documents, the petitioner was hospitalised only during the period 16th October, 2019 to 21st October 2019 at Saroj Super Specialty Hospital for treatment for "Enteric Fever with AFI with Dehydration". It is also relevant to point out that the medical documents/certificates shows overlapping period even though issued by different doctors and some of them are very vague as without even assigning any reasons as can be seen from the medical certificate dated 21st November, 2019 of Dr. Shiv Kumar Jamla, it simply states "fit to resume duty from 21st November, 2019". Thus the respondent No. 1 has correctly exercised the discretion conferred by Clause 14 of the Examination Bye Laws. The petitioner, therefore, was not eligible to appear in the Class X exams which were conducted in the month of February/March, 2020 in view of bar under the Examination Bye Laws."

12. Much reliance was placed by learned counsel for the petitioner on the judgment of the Coordinate Bench in the case of Pranshu Shakti Tiwary through Mother Smt. Kanchan Tiwary vs. Central Board of Secondary Education & Ors. (supra). That was a case in which NSG, Manesar had issued a certificate stating that the petitioner therein had spent a total of 43 days as being absent from the school for his medical recovery. The veracity of the certificate was accepted. This court held as follows:-

"26. Applying the principle laid down in the said decision, it is clear that, while interpreting the expression "exceptional circumstances created on medical grounds" in clause 14(ii) of the Bye-laws, it would be folly, on the part of this Court, or any judicial authority, to read the said words as corsetted by the use of the words "serious diseases like cancer, aids, TB or similar serious diseased requiring long period of hospitalization" which follow thereafter. Rather, the use of the words "such as" clearly indicate that the categories of diseases which follow after the said words are not to be treated as exhaustive, but only illustrative in nature. When interpreting the words "exceptional circumstances created on medical grounds" in the light of this legal position, Read thus, the Court has necessarily to bear in mind the fact that it is dealing with the case of a

student suffering from a medical ailment, owing to which he has been unable to attend the required number of classes. The approach of a Court, in a case such as this, has necessarily to be distinct and different from other cases. It would be a complete travesty of justice if the Court is to adopt a hyper technical interpretation of clause 14(ii) of the Bye-laws, so as to deny such a student, who, despite his medical disablement, wants to appear in the examination and try and score well therein, a chance to do so. That can never be aim or purport of the clause. Rather, it appears that, by wording the clause in a deliberately wide manner, the framers thereof have left ample room for cases in which, though the candidate may not be suffering from the specific disablements stipulated in the said clause, she/he is nevertheless, unable to attend the requisite number of classes owing to a serious medical condition. Viewed thus, any case where the student is handicapped from attending classes owing to exceptional circumstances created on medical grounds, would, in my view, clearly fall within the umbrella of clause 14(ii) of the Bye-laws (supra).

27. Where the rule has not chosen to particularise the expression "exceptional circumstances", I am of the view that the phrase has necessarily to be accorded a purposive construction. The recent pronouncements of the Supreme Court in *Shailesh Dhairyawan v. Mohan Balkrishna Lulla* (2016) 3 SCC 619 and *Richa Mishra v. State of Chhattisgarh* (2016) 4 SCC 179 clarify that, in recent times, the "golden rule" of interpretation has metamorphosed from the rule of literal construction to the rule of purposive interpretation. Purposively interpreted, I am of the view that the words "exceptional circumstances created on medical grounds", as employed in clause 14(ii) of the Bye-laws have to expansively construed. Where a student is, owing to genuine medical reasons, unable to attend classes, and, thereby, his attendance falls short of 60%, as in the present case, he would be entitled to have the period of his absence, to the extent it exceeds 60% of the classes held, as attributable to "exceptional circumstances created on medical grounds".

13. Hence, the Coordinate Bench held that the Bye-laws in question have to be purposively interpreted and the term "exceptional circumstances" as used in Clause 14(ii) of the Bye-laws have to be expansively construed. Where a student owing to genuine medical reasons is unable to attend classes and his attendance falls short of 60%, he would be entitled to exemption and to have the period of his absence to the extent it is below 60% of the classes held as attributable to "exceptional circumstances created on medical grounds".

14. I may look at the facts of this case. As noted above, the writ petition is completely silent on the grounds on which the petitioner remained absent for such a long duration. The petitioner has attended only 80 classes out of 186 classes and has an attendance of 43%. He has remained absent on 106 days Attached as annexure P-2 with the writ petition, the petitioner has attached a plethora of documents which are alleged to be the basis to claim exemption from having the requisite 75% attendance. The documents are vague. They at best

show that the petitioner was hospitalized in Saroj Super Specialty Hospital from 16.10.2019 and 21.10.2019. All that the said prescription shows "Hepatomegaly with grade I fatty change". Another document issued by the said Saroj Super Specialty Hospital which is dated 21.10.2019 states that the petitioner is suffering from "Enteric Fever with AFI with Dehydration". Apart from them, pages and pages of diagnostic reports have been attached. The sum and substance of these documents which is not pleaded in the writ petition but appears to be that the petitioner was hospitalized for 5 days in October 2019.

15. Given the nature of the documents placed on record and the purported medical issue of the petitioner, in my opinion, respondent No. 1 has rightly exercised its discretion and rejected the case of the petitioner for condonation of shortage of attendance. Based on this sketchy medical record placed on record, there can be no occasion to find fault in the decision of respondent No. 1.

16. There is no merit in the petition and the same is dismissed. Pending applications also stand dismissed.