

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.7158/2009**

% Judgment delivered on: 21.04.2010

Indra Kishore Prasad. Petitioner.
Through: Mr. Anurag Ranjan, Adv.

Versus

Government of NCT of Delhi & Ors. Respondents.
Through: Mr. Atul Kumar, Adv. for R-2
Mr. Dheeraj Trikha, Adv. for
R-3

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

- | | | |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

*

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions to direct the respondent Nos. 2 and 3 to allow the son of the petitioner to appear in the Secondary School Examination, 2009.

2. Brief facts of the case as set out by the petitioner and relevant for deciding the present petition are that the son of the petitioner, Niwas Anand, is a student of the respondent no.3 school since class VI. In 2008, he was promoted to class X and he duly filled in all his forms and completed all other procedural formalities for appearing in the Secondary School Examination, conducted by respondent no.2 CBSE. Vide letter dated 20.9.2008 the petitioner was informed about certain acts of misconduct committed by his son. After receiving the said letter the petitioner met the school authorities and the matter was settled and his son was advised to study from home and was assured that he would be allowed to take all the subsequent examinations. Consequently, the petitioner kept on depositing the entire requisite school fee but was shocked when his son was not allowed to sit in the school examination held in December, 2009 and also in the practical examination held in January, 2010. The petitioner then served a legal notice to the school and was again given the assurance that his son would be allowed to sit in the board exam. However, the school refused to handover the Admit card issued by CBSE to the petitioner's son and hence feeling

aggrieved with the same, the petitioner has preferred the present petition.

3. Vide order dated 26.2.2009, directions were given to the respondent Nos. 2 and 3 to issue the Roll Number/Admit Card to the son of the petitioner namely Niwas Anand to enable him to appear in the 10th class examination and pursuant to the said interim directions, he had appeared in the said examination. Vide order dated 8.5.2009, this court also directed that his result of 10th class examination shall be kept in sealed cover.

4. Counsel for the petitioner submits that the petitioner's son, Niwas Anand was a regular student of the respondent no.3 school since class 6th and that he was regularly promoted to higher classes. Counsel further submits that Niwas had duly filled the application form for his 10th class exams and had completed all procedural formalities for appearing in the final exams to be conducted by the Central Board of Secondary Education. Counsel also submits that the petitioner had also deposited the necessary school fee for the entire academic year 2008-2009. Counsel further submits that the respondent school

had issued a warning letter dated 20.9.2008 alleging some misconduct on the part of Niwas and thereafter he was not allowed to sit in his class. Counsel further submits that although the petitioner's son was assured that no disciplinary action would be taken against him but he was advised by the school to study from home instead of studying in the school. Counsel further submits that accordingly Niwas continued to study from home but the petitioner regularly paid the school fee. Counsel further submits that the name of Niwas was sent by the school to the CBSE for issuance of necessary Admit Card and in fact the Admit Card was issued by the CBSE in his favour. Counsel thus submits that once the said admit card was issued in favour of Niwas then he could not have been debarred by the respondents to take his final exams.

5. Opposing the present petition, Mr. Atul Kumar, counsel for respondent no.2 submits that the petitioner's son was not eligible to sit in 10th class exam as he failed to maintain the required 75% attendance. Counsel submits that the petitioner's son had attained only 47.40% attendance in the 10th standard from the commencement of the session till 31st December 2008.

Counsel placed reliance on Rule 13.1(i) & (ii) of the Examination Bye-Laws of the CBSE and submits that because of the shortage of attendance, petitioner's son was not eligible to sit in the exam. Counsel further submits that under Rule 14(ii), the shortage up to 15% can be condoned by the Chairman but the cases where attendance is below 60%, they can only be considered by the Chairman, only in exceptional circumstances as spelt out in the said Rule itself. Counsel thus submits that the case of Niwas did not fall within the purview of the said Rule and therefore he was rightly disqualified to sit in the Class X examination. Counsel thus states that in fact his name was struck off from the school roll w.e.f. October, 2008 and due to that reason also the petitioner's son was found not eligible to sit in the Class 10th board exam. In support of his arguments counsel placed reliance on the decision of this court in ***Kumari Preeti Srivastava Vs. CBSE (W.P.(C) No. 1049/94)***.

6. Counsel for the respondent No.3 school also opposes the present petition. He submits that the petitioner's son indulged in misconduct and indiscipline and as such a warning letter dated 20.9.2008 was issued to him. Counsel further

submits that vide letter dated 20.9.2008 the petitioner was informed about the absenteeism on the part of his son but despite the said intimation, the petitioner did not opt to send his son to attend school. Counsel further submits that the name of Niwas was struck off from the roll of the school and that this fact was also intimated to the petitioner vide communication dated 28.10.2008. Counsel thus submits that the petitioner's son was never advised by the school not to attend the school and that he himself remained absent from the school and therefore there is no merit in the present petition.

7. I have heard learned counsel for the parties and have given my conscious consideration to the facts of the present case.

8. The son of the petitioner who was a student of 10th class was not issued the admit card to appear in his board examination of 10th Standard as he was found short of attendance and also on account of fact that his name was struck off from the rolls of the school. The explanation for not attending the classes given by the petitioner that his son was advised by the school to carry on his studies from home is not at all convincing when nothing in writing came from the side of the

school. In fact vide letter dated 29.9.2008 the respondent school had called upon the petitioner to send his ward to school immediately as there was a condition of attaining the minimum required attendance to become eligible to appear in the 10th board exams. Vide another communication dated 30.10.2009, the petitioner was again informed that the name of his ward was struck off from the roll of the school and because of his shortage in attendance he would not be eligible to appear in the Board Examination. It is thus quite manifest that for the shortage of his attendance it is the petitioner and his ward who must take the blame instead of putting baseless allegations on the respondent school or the respondent CBSE.

9. Under the said Rule 13.1(i), it is mandatory for the student to attend 75% of his classes to become eligible to appear in the final year exams of 9th, 10th, 11th and 12th Standard, as the case may be, counted from the day of commencement of teaching session up to 1st of the month preceding the month in which the examination of the School/Board commences. Rule 14, deals with the power of the Chairman of the CBSE to condone shortage of attendance up to 15% and the same is condonable

after the case is forwarded by the school spelling out the reasons for shortage of attendance and so far the attendance below 60% is concerned, the same can be considered by the Chairman only in exceptional circumstances, primarily on medical grounds. It would be appropriate to refer to Rule 14 of the same as under:

"14. Rules for Condonation of Shortage of Attendances :

- (i) If a candidate's attendance falls short of the prescribed percentage, 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 the 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. Cases of candidates with attendance below 60% in class X or class XII, 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 of hospitalization.*

- (iii) The Principal shall refer a case of shortage within the above prescribed limit of condonation to the Board, either with the recommendations or with valid reasons for not recommending the case.*
- (iv) The following may be considered valid reasons for recommending the cases of the candidates with attendance less than the prescribed percentage:*
 - (a) Prolonged illness;*
 - (b) Loss of father/mother or some other such incident leading to his absence from the school and meriting special consideration; and*
 - (c) Any other reason of similar serious nature.*
 - (d) Authorised participation in sponsored tournaments and sports meets of not less than inter-school level and at NCC/NSS camps including the days of journeys for such participation shall be counted as full attendance."*

10. Clearly, the case of the petitioner falls much below 60% of the total attendance and the same admittedly not being a case of any medical exigency, therefore no relaxation could have been granted to the petitioner to meet the shortfall of the required 75% attendance. The petitioner's son, who was found indulging in certain acts of indiscipline and misconduct was issued a warning letter dated 20.9.2008 by the school and it appears that after the said warning letter, the son of the petitioner himself did not choose to attend his classes. The petitioner's son cannot claim any vested right to appear in the board exam of 10th Class simply because of the fact that his admission form was forwarded by the school as the academic

session was still continuing and he was required to complete the mandatory requirement of completing 75% of his attendance. Each and every student either in school or in college is expected to attend all his classes for getting proper education and training in all the subjects so that when such a student qualifies the exams he had good learning of all the subjects in which he had appeared, therefore, there is nothing wrong to enforce strict discipline for the students to attend the minimum percentage of the classes. In a particular year, in a given subject, to meet certain unforeseen circumstances under the CBSE Rules there is a power vested with the Chairman to condone the shortage of attendance. So far the shortage of 15% is concerned, the school, in a deserving case, seeks relaxation by taking up the matter with the Chairman of the CBSE and so far attendance below 60% is concerned, it is only in exceptional cases on medical grounds that the Chairman can grant the relaxation. No fault can be found with the said rules of the CBSE and no such plea has been taken by the petitioner to impinge the said rules. The conduct of the petitioner was totally irresponsible and no convincing explanation has come forth as to why the ward of the petitioner

did not attend his classes although fully warned by the school of the consequences arising therefrom.

11. I do not find any merit in the present petition and the same is hereby dismissed. However, the respondent school is directed to grant admission to the petitioner in 10th standard in the current academic session and allow him to reappear in the board exams of 10th class.

12. The undeclared result of the petitioner in his compartment examination need not now be declared as a result of the dismissal of the present petition.

April 21, 2010
mg

KAILASH GAMBHIR, J.