

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

+ **LPA 184/2010**

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Reserved on: 23rd March, 2010

Decided on: 7th April, 2010

SMRITI SHARMA THR HER NATURAL
GUARDIAN

..... Appellant

Through: Mr. Naveen Sharma with Ms. Swati
B.Sharma, Advocates

versus

MANAGEMENT OF VIVEKANAND
SCHOOL & ORS

..... Respondents

Through: Mr. Anil Kumar Gupta, Adv. for R-1-2
Mr. Atul Kumar, Adv. for R-3
Ms. Anju Bhattacharya, Adv. for R-4

Coram:

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA**

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

MUKTA GUPTA, J.

1. The present appeal lays a challenge to the judgment dated 8th January, 2010 passed in WP (C) No.11467/2009 whereby the writ petition of the Appellant inter alia seeking the following directions, was dismissed:

- (a) To direct the Respondent Nos.1 &2 to promote the ward of Petitioner in 12th standard;
- (b) To direct Respondent Nos.1 & 2 to issue games/sports certificate of Ms.Smriti Sharma ward of Petitioner;
- (c) To direct the Respondent Nos. 3 & 4 to conduct an inquiry against Respondent Nos. 1 & 2.

2. The Appellant a student of Respondent No.1, appeared in the Class XI exams, which were held in March, 2009. Since the Appellant did not get the requisite 33% marks, she was not promoted and was permitted to appear in the compartment exams for Mathematics and Business Studies. However, even in the compartment examination, the Appellant could not secure the passing marks, that is, 33% in both the subjects.

3. Aggrieved by the inaction of the Respondents in not promoting the Appellant to class XII, a writ petition being W.P. (C) No. 11467/2009 was filed by the Appellant. The learned Single Judge after hearing the parties dismissed the writ petition vide order dated 8th January, 2010, on the ground that the Appellant did not secure 33% marks in the aggregate and hence she could not be considered for promotion to the next class.

4. Learned counsel for the Appellant contends that the Respondents have calculated the marks obtained by the Appellant incorrectly because as per the instructions issued by the Respondent No. 4 under Rule 41 of the Delhi School Education Rules, 1973 (in short “the Rules”), the Respondents were not entitled to count the marks of the three class tests conducted and in any case the Appellant was entitled to grace marks and had the grace marks been allotted to her, she could have been declared ‘passed’.

5. The mark sheet of the Appellant is reproduced as under:-

FIRST TERMINAL

SUBJECTS	CT1	CT2	PR	IA	TH	TOTAL	SECTION	CLASS
	25	25	30	10	100	125	HIGH	HIGH
ENGLISH	X	9	X	4.5	35/90	48.5	74.5	106
ACCOUNTANCY	X	17	X	X	25F	42	100	120
MATHEMATICS	X	2.5F	X	X	11F	13.5	41.5	124
BUSINESS STUDIES	X	3.5F	X	X	9F	12.5	95.5	120
ECONOMICS	X	5F	X	X	27F	32	100	122
TOTAL		37		4.5	107	148.5		
PERCENT (%)						19.8		

ANNUAL

SUBJECTS	CT3	CT4	PR	IA	TH	TOTAL	SECTION	CLASS	GRAND
	25	25	30	10	90	150	HIGH	HIGH	TOTAL 275
ENGLISH	8	10.5	X	7	28F	53.5	87	131	102
ACCOUNTANCY	11.5	6.5F	X	X	31F/100	49	126	146.5	91
MATHEMATICS	6F	6.5F	X	X	39/100	51.5	62.5	144	65
BUSINESS STUDIES	8	8	X	10	26.5F	52.5	105	145	65
ECONOMICS	16	8	X	8	27F	59	117	146.5	91
TOTAL	49.5	39.5		25	151.5	265.5			414
PERCENT (%)						35.4			30.11

6. Learned counsel for the Respondents have contended that as per the instructions issued by the Directorate of Education the assessment, evaluation and promotion of the students from Class I to IX and XI were as per the following relevant norms with effect from the session 2001-2002 onwards:

“1. Evaluation of achievement of students shall be made through a series of tests administered according to a plan of tests prepared by the Directorate of Education, Government of Delhi.

2. Two terminals tests shall be held during the session and the comprehensive test shall be held in the month of March.

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5. Promotion to the next higher class shall be decided on the basis of the cumulative results of the two terminal tests and the comprehensive test.

6. The relative weightage of the marks in the tests in each subject shall be as under:-

(a) No written test shall be conducted in preliminary classes and class I except to test writing skill and in classes II and III tests in all the subjects shall be partly oral and partly written.

(b) CLASSES IV to IX AND XI TEST

TEST	MARKS									WEIGHTAGE
	IV to VIII			IX			XI			
	Th.	Pr.	Tl.	Th.	Pr.	Tl.	Th.	Pr.	Tl.	
1 st Test	40	00	40	40	00	40	40	00	40	10%
2 nd Test	40	20	60	40	20	60	40	20	60	15%
Comprehensive test	60	15	75	60	15	75	60	15	75	75%
Total	140	35	175	140	35	175	140	35	175	100%

Marks obtained in Ist and 2nd tests, in theory and practicals separate wherever applicable shall be converted into 10% and 15% respectively obtaining the weightage allotted to them. No such conversion shall be required for the comprehensive test since the number of marks and weightage percentage allotted to it is the same i.e. 75.

In subjects where practical work has not been prescribed, the total marks allotted shall be for theory only.

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31. PROMOTION RULE FOR CLASSES IX & XI:

A student not eligible to be declared “passed” shall be declared “promoted” at the end of the session of a class provided he/she is entitled for grace marks as admissible under instruction 35 of these rules.

32. COMPARTMENT EXAMINATION:

A student who is eligible to take the comprehensive test in order to be declared “passed” can be declared eligible for appearing at the ‘compartmental examination’, provided he/she has obtained at least 20% in one failing subject in class XI and in not more than two failing subject(s) in classes IV to IX. In case the candidate gets at least 15% of marks in failing subject/subjects (not more than two in classes IV to IX), he should get at least 40% marks in aggregate in the remaining subjects in order to become eligible for the compartmental examination. Such a student shall be eligible to appear in the subject(s) at a subsequent examination to be held in the last week of April before the summer vacation and to be known as the “Compartmental Examination”. If the student secures in the subject(s) in which he/she has taken the compartmental examination, at least 33% marks disregarding the terminal test marks, he/she shall be declared successful in the compartmental examination and promoted to the next higher class.”

7. On 15.12.2003 a circular was issued by Respondent No.4 introducing the system of “Continuous and Comprehensive Evaluation Plan” (in short CCEP). Under this scheme, four examinations were to be conducted in a year for the students from classes II – XII in addition to the routine three terminal tests. Each of these examinations were to cover 1/4th of the syllabus to be

taught in the relevant quarter. These examinations were to consist of objective type questions on all subjects and on all topics which were to be covered in that particular quarter. The results of the examinations were to give to the Respondent No. 4 an indication of the learning level of the students and also the performance of the teachers.

8. Subsequently, the Directorate of Education issued a circular dated 25th July, 2005 introducing the “Concept of unit tests” as per which stress was laid on the need for holding unit tests on every Monday of the week, in the first period regularly, with a view to provide students regular practice of learning and revision of the course. The marks obtained by the students were to be recorded in the teachers’ diary and thereafter uploaded on the website and the information was to be sent to the parents as well.

9. It may be noted that these subsequent guidelines do not prescribe the criteria as to how the marks would be evaluated, how much marks of these class tests or unit tests or whether at all any marks of these tests are to be taken into consideration in declaring the final results. Thus, with regard to the calculation of the final result, we are left with the instructions issued for the year 2001-2002 onwards, as per which two terminal tests and one comprehensive test was to be conducted and the corresponding weightage of

the three exams was 10% for the first terminal, 15% for the second terminal, and 75% for the final exams.

10. From a perusal of the mark sheet of the Appellant it is apparent that three class tests that is CT-2, CT-3 and CT-4 were conducted and one terminal test, that is, half yearly examination was conducted and thereafter an annual examination was conducted. Even as per the classification shown by the Respondent No.1 it has conducted the first terminal and the annual examination whereby the first terminal included the CT-2 and the half yearly and the annual examination included CT-3 and CT-4 and the final. We are afraid that the calculations done by Respondent No. 1 are not in terms of the instructions issued by the Respondent No.4 for calculation of the final result. It is for this reason, during the course of hearing, we had requested the learned counsels for the Appellant and the Respondents to calculate the marks obtained by the Appellant by giving weightage in terms of the directions issued by the Respondent No.4 i.e., one chart with 10% weightage to the terminal test and 75% to the final and another chart with 15% weightage to the terminal test and 75% to the final and thereafter to convert it to 100%. Even as per these calculations, we found that the Appellant did not get the requisite 33% marks in all the subjects. Faced with this situation, the learned counsel for the Appellant contended that in terms of Instruction at serial No.

35 of “the Rules”, the Appellant is entitled to grace marks of 5 in each subject with a maximum of 10 in all and if these grace marks had been awarded to the Appellant, she would have been declared ‘passed’. The said contention glosses over the last sentence of instruction at Serial No. 35, according to which no grace marks can be awarded to a student who has taken the compartment examination. Instruction at Serial No. 35 under “Rule 41” states as:

“35. Grace marks for classes IX & XI:

Grace marks upto a maximum of 10 in all, shall be awarded to a student to reach the minimum required 33% of marks in each of the subject (s), subject to the condition that a minimum of 25% of marks shall be secured in each subject at the comprehensive test as per rule 29 to make him eligible for promotion, provided he/she does not require more than 5 marks in a subject to come upto the minimum required of 33% of marks in that subject. However, no grace marks shall be awarded to a student taking the compartmental examination.”

11. In the present case the Appellant opted for the compartment examination in which also she could not secure the requisite pass marks, that is, 33% and thus was not entitled to any grace marks having availed the opportunity of repeating the examinations.

12. In view of the facts stated above, we find no merit in the appeal and the same is dismissed.

(MUKTA GUPTA)
JUDGE

(MADAN B.LOKUR)
ACTING CHIEF JUSTICE

APRIL 07, 2010
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